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# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 283

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

MURRY GUGGENHEIM

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

**PETITION FOR CERTIORARI FILED AUGUST 4, 1932**
**CERTIORARI GRANTED OCTOBER 17, 1932**

(36980)

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Before U. S. Board of Tax Appeals

Docket No. 43698

MURRY GUGGENHEIM, PETITIONER

*vs.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances:
For taxpayer: Arthur A. Ballantine (withdrawn), George E. Cleary, Esq., Elihu Root, jr., Esq.
For commissioner: Frank T. Horner, Esq.
Transferred to Mr. Arundell, 11/20/31.

*Docket entries*

1929
Apr. 16—Petition received and filed. Taxpayer notified. (Fee paid.)
" 17—Copy of petition served on general counsel.
June 17—Answer filed by general counsel.
" 19—Copy of answer served on taxpayer. General calendar.
1930
Jan. 21—Hearing set March 18, 1930.
" 31—Motion to postpone hearing for 90 days filed by taxpayer. February 3, 1930, granted and set June 16, 1930.
2 May 15—Notice of change of hearing to fall term, 1930.
Aug. 21—Hearing set November 5, 1930.
Nov. 5—Hearing had before Judge Murdock and Judge Phillips, called on merits. Stipulation of facts filed and received in evidence. Taxpayer's brief due Jan. 5, 1930; reply brief, April 5, 1930; commissioner's brief, March 5, 1930.
Dec. 1—Transcript of hearing Nov. 5, 1930, filed.
" 29—Brief filed by taxpayer. Mr. Phillips case.
1931
Mar. 5—Brief filed by general counsel.
" 11—Notice of withdrawal of Arthur A. Ballantine as counsel for taxpayer filed.
Apr. 3—Reply brief filed by taxpayer. April 7, 1931, copy served on general counsel.
" 10—Notice of appearance of G. E. Cleary as attorney of record filed by taxpayer.
Dec. 18—Opinion rendered, Mr. Arundell, div. 7. Decision will be entered under rule 50.
1932
Jan. 4—Notice of appearance of Elihu Root, jr., as counsel for taxpayer filed.
" 4—Notice of settlement filed by general counsel.
3 Jan. 6—Consent to settlement filed by taxpayer.
" 6—Decision entered, C. Rogers Arundell, div. 7.

Jan. 6—Motion to fix amount of bond at $3,600,000.00 filed by taxpayer.
" 6—Order fixing amount of bond at $3,600,000.00 entered.
" 9—Power of attorney and agreement filed.
" 9—Bond in the sum of $3,600,000.00 approved by C. R. Arundell, member, div. 7, and filed.
" 9—Petition of taxpayer for review in 2nd Circuit Court of Appeals filed.
" 11—Proof of service of petition filed.
" 11—Præcipe with proof of service thereon filed.

Before United States Board of Tax Appeals

[Title omitted.]

4 *Petition*

Filed April 16, 1929

The above-named petitioner hereby petitions for a redetermination of the deficiency in gift tax for the year 1925, determined by the respondent in his notice of deficiency, symbols MT-ET-GT-CL-68-JEK, dated March 8, 1929, and as the basis of such proceeding alleges as follows:

(a) The petitioner is an individual with his principal office at 120 Broadway, New York, New York.

(b) The notice of deficiency dated March 8, 1929, above referred to, a true copy of which is attached hereto and made a part hereof and marked Exhibit A, was mailed to the petitioner by the respondent on March 8, 1929.

(c) The tax in controversy is gift tax for the calendar year 1925, in the amount of $2,465,681.20, all of which is in dispute.

5 (d) The respondent's determination that a deficiency in gift tax for the year 1925 is due from petitioner is erroneous in the following particulars:

(1) No deficiency in gift tax can be lawfully asserted because section 319 of the revenue act of 1924, as amended, is invalid under section 9 of Article I of the Constitution of the United States in that it is a direct tax levied without apportionment according to population, and is also invalid under the fifth amendment to the Constitution in that the classification made is arbitrary and the graduated rates result in a deprivation of property without due process of law.

(2) Even if section 319 of the revenue act of 1924, as amended, is constitutional (which is denied), the respondent erred in holding that the petitioner made any transfer by gift of any property within the calendar year 1925 by terminating in that year his power to revoke trusts created by him in 1917.

(3) Even if section 319 of the revenue act of 1924, as amended, could properly be construed as imposing a tax upon the termination of the power to revoke a trust created after its enactment (which is denied), the respondent erred in applying the statute so as to impose

a tax upon the termination by petitioner in 1925 of power to
6 revoke trusts created by him in 1917, before the enactment of the statute.

(4) The respondent erred in holding that petitioner made a taxable transfer by gift in 1925 of the accrued income of certain trusts amounting to $116,548.72 for the reasons stated in the first three assignments of error and for the further reason that petitioner had no power to revoke with respect to such income, and no such power with respect to such accrued income was terminated by him in 1925.

(e) The facts upon which the petitioner relies as the basis for this proceeding are as follows:

(1) Petitioner's name was originally "Morris" Guggenheim. Some years ago petitioner adopted the name "Murry" Guggenheim, and that is the petitioner's correct name. Petitioner is the Murry Guggenheim to whom was addressed the deficiency letter attached hereto as Exhibit A. Petitioner is the Morris Guggenheim who in 1917 created certain trusts for the benefit of Edmond A. Guggenheim and Lucille G. Gimbel, referred to below.

(2) On June 28, 1927, petitioner, under the name of Morris Guggenheim, pursuant to an agreement made and executed in Jersey City, New Jersey, created a trust fund primarily for the benefit of his son, Edmond A. Guggenheim, and on June 28, 1917, conveyed, assigned, transferred, set over, and delivered to Commercial
7 Trust Company of New Jersey, corporate trustee, and Clarence L. Myers, individual trustee, in said city of Jersey City, New Jersey, all of the securities constituting the principal or corpus of such trust fund. Said trustees then acquired and have since continuously held title to and possession of the corpus of this trust, have received the income thereon, and have paid over such income to, or accumulated it for the benefit of, the beneficiaries of the trust.

(3) On June 28, 1917, petitioner, under name of Morris Guggenheim, pursuant to an agreement made and executed in Jersey City, New Jersey, created a trust fund primarily for the benefit of his daughter, Lucile G. Gimbel, and on June 28, 1917, conveyed, assigned, transferred, set over, and delivered to Commercial Trust Company of New Jersey, corporate trustee, and Clarence L. Myers, individual trustee, in said city of Jersey City, New Jersey, all of the securities constituting the principal or corpus of said trust fund. Said trustees then acquired and have since continuously held title to and possession of the corpus of this trust, have received the income thereon, and have paid over such income to, or accumulated it for the benefit of, the beneficiaries of the trust.

(4) On or about April 1, 1918, petitioner made and executed in Jersey City, New Jersey, a trust agreement, dated as of June 28, 1917, between himself, under the name of Morris Guggenheim, settler, and Commercial Trust Company of New Jersey, cor-
8 porate trustee, and Clarence L. Myers, individual trustee, primarily for the benefit of his son, Edmond A. Guggenheim,

such trust agreement having been made in substitution for the trust agreement mentioned in paragraph (2), supra. Such trust agreement is hereinafter referred to as the original Edmond A. Guggenheim trust agreement. Under such trust agreement as amended from time to time, the said trustees have continued to hold title to and possession of the corpus of the trust acquired by them on June 28, 1917, to receive the income thereon, and have paid over such income to, or accumulated it for the benefit of, the beneficiaries of said trust.

(5) On or about April 1, 1918, petitioner made and executed in Jersey City, New Jersey, a trust agreement, dated as of June 28, 1917, between himself, under the name of Morris Guggenheim, settler, and Commercial Trust Company of New Jersey, corporate trustee, and Clarence L. Myers, individual trustee, primarily for the benefit of his daughter, Lucile G. Gimbel, such trust agreement having been made in substitution for the trust agreement mentioned in paragraph (3), supra. Such trust agreement is hereinafter referred to as the original Lucile G. Gimbel trust agreement. Under such trust agreement, as amended from time to time, the said trustees have continued to hold title to and possession of the corpus of said trust acquired by them on June 28, 1917, to receive the income thereon, and have paid over such income to, or accumulated it for, the benefit of the beneficiaries of said trust.

(6) The original Edmond A. Guggenheim trust agreement
9 and the original Lucile G. Gimbel trust agreement, respectively, contained the following as the eleventh article thereof:

"Eleventh. Anything herein to the contrary notwithstanding, the settler may, from time to time during the continuance of the trust, by instrument in writing executed and acknowledged in the manner required for a deed of real property, so as to enable it to be recorded in the State of New Jersey, and delivered to the trustees, or their successors, modify or alter in any way or revoke in whole or in part this agreement and the trust then existing, and the estate and interests in property hereby created and provided for, and in case of such modification, alteration, or revocation said instrument shall direct the disposition to be made of the trust fund, or of the part of the trust fund affected by such modification, alteration, or revocation, and upon delivery of such instrument to the trustees, or their successors, said instrument shall take effect according to its provisions, and the trustees, or their successors, shall make, execute, and deliver all such documents, and make such conveyances, transfers, and deliveries of property, rights, interests, and securities as may be necessary or proper in order to carry the same into effect, and no one shall have any right, interest, or estate under this agreement, except subject to and in accordance with such modifications, alteration, or revo-
10 cation thereof; provided, however, that no power of revocation in this agreement reserved or contained shall affect the income at any time received or accrued upon the trust fund, or upon the properties, interests, or securities originally or at any time comprised therein, or affect any accumulations or investments of such

income; but the legal ownership and title of the trustees and the beneficial ownership and title of the beneficiary, or beneficiaries, in and to such income shall be and remain absolute and indefeasible, subject only to such directions as the settler may give to the trustees under the powers herein reserved or contained, as to the respective proportions of income to be paid over or accumulated, or as to the investment or reinvestment of accumulations or varying the respective shares of the beneficiaries in the income to be paid over or accumulated."

(7) The petitioner has at no time exercised the power to revoke the trusts conferred by the eleventh article of said original trust agreements. The petitioner, by instruments dated May 12, 1920, March 3, 1921, and (in respect of the original Edmond A. Guggenheim trust agreement) November 16, 1923, exercised the power conferred by the aforesaid article to alter or amend said trust agreements, but has at no time exercised such power in such a manner as to apply any of the trust property or income to his own benefit.

(8) On May 5, 1921, the petitioner made and executed an
11 instrument wherein he relinquished and divested himself of all powers reserved or retained by him in the original Edmond A. Guggenheim trust agreement of directing and controlling the administration and management of the trust fund held under said trust agreement, and granted, bargained, sold, assigned, and transferred such powers of control and management to Louis F. Rothschild and Clarence L. Myers, and since May 5, 1921, such powers have not been vested in or exercised by petitioner.

(9) On May 5, 1921, the petitioner made and executed an instrument wherein he relinquished and divested himself of all powers reserved or retained by him in the original Lucile G. Gimbel trust agreement of directing and controlling the administration and management of the trust fund held under said trust agreement, and granted, bargained, sold, assigned, and transferred such powers of control and management to Louis F. Rothschild and Clarence L. Myers, and since May 5, 1921, such powers have not been vested in or exercised by petitioner.

(10) On July 13, 1925, the petitioner made and executed an instrument wherein he modified the original Edmond A. Guggenheim trust agreement, as amended, "by eliminating therefrom and cancelling the 'eleventh' article or subdivision thereof."

(11) On July 13, 1925, the petitioner made and executed an instrument wherein he modified the original Lucile G. Gimbel trust
12 agreement, as amended, "by eliminating therefrom and cancelling the 'eleventh' article or subdivision thereof."

(12) On March 15, 1926, petitioner mailed to the collector of Internal revenue for the second district of New York his gift-tax return for the calendar year 1925.

(13) Under date of January 28, 1929, R. M. Estes, Deputy Commissioner of Internal Revenue, addressed to the petitioner a notice stating that a deficiency in the petitioner's gift tax for 1925 had been tentatively determined as follows:

| | |
|---|---|
| Gross gifts, herein tentatively determined | $13,278,418.99 |
| Deductions tentatively allowed | 140,600.00 |
| Net amount of taxable gifts herein tentatively determined | $13,137,818.99 |
| On taxable gifts, in the net amount tentatively determined, the tax is | $2,465,954.75 |
| The amount of tax shown by the return (and paid) is | 273.55 |
| Accordingly, a deficiency is tentatively determined in the amount of | $2,465,681.20 |

The return has been verified as filed except as to the following changes:

| 13 Gross gifts, Schedule A | Returned | Tentatively determined |
|---|---|---|
| Principal of revocable trust in favor of daughter, Lucile G. Gimble, created June 28, 1917 (as amended), which right to revoke was surrendered by donor in agreement of July 13, 1925. Corpus account per sheet A accompanying letter to Commissioner of Internal Revenue dated June 7, 1927. | | |
| Item 1 | 0.00 | $468,600.00 |
| Item 2 | 0.00 | 606,283.75 |
| Item 3 | 0.00 | 232,925.00 |
| Item 4 | 0.00 | 34,375.00 |
| Item 5 | 0.00 | 143,680.00 |
| Item 6 | 0.00 | 1,389,975.00 |
| Item 7 | 0.00 | 396,831.88 |
| Item 8 | 0.00 | 563,501.88 |
| Item 9 | 0.00 | 474,513.75 |
| Item 10 | 0.00 | 151,126.88 |
| Item 11 | 0.00 | 106,000.00 |
| Item 12 | 0.00 | 111,615.00 |
| Item 13 | 0.00 | 354,387.23 |
| Item 14 | 0.00 | 58,000.00 |
| Item 15 | 0.00 | 629,694.08 |
| Item 16 | 0.00 | 287,426.25 |
| Item 17 | 0.00 | 65,312.94 |
| Item 18 | 0.00 | 329,172.04 |
| Item 19 | 0.00 | 55,000.00 |
| Item 20 | 0.00 | 254,375.00 |
| Item 21 | 0.00 | 30,678.30 |
| Item 22 | 0.00 | 796.58 |
| Accrued income | 0.00 | 61,644.63 |

| 14 Gross gifts, Schedule A | Returned | Tentatively determined |
|---|---|---|
| Principal of revocable trust in favor of son, Edmond. A. Guggenheim, created June 28, 1917 (as amended), which right to revoke was surrendered by donor in agreement of July 13, 1925. Corpus account per sheet C accompanying letter to Commissioner of Internal Revenue dated June 7, 1927. | | |
| Item 1 | 0.00 | $310,181.25 |
| Item 2 | 0.00 | 135,037.50 |
| Item 3 | 0.00 | 232,925.00 |
| Item 4 | 0.00 | 150,500.00 |
| Item 5 | 0.00 | 34,375.00 |
| Item 6 | 0.00 | 130,771.25 |
| Item 7 | 0.00 | 862,000.00 |
| Item 8 | 0.00 | 395,824.69 |
| Item 9 | 0.00 | $563,503.13 |
| Item 10 | 0.00 | 475,546.88 |
| Item 11 | 0.00 | 150,125.00 |
| Item 12 | 0.00 | 106,000.00 |
| Item 13 | 0.00 | 111,615.00 |
| Item 14 | 0.00 | 279,327.52 |
| Item 15 | 0.00 | 58,000.00 |
| Item 16 | 0.00 | 629,694.08 |
| Item 17 | 0.00 | 382,294.00 |
| Item 18 | 0.00 | 287,426.25 |
| Item 19 | 0.00 | 205,000.00 |
| Item 20 | 0.00 | 127,321.47 |
| Item 21 | 0.00 | 64,308.13 |
| 15 Item 22 | 0.00 | 329,166.71 |
| Item 23 | 0.00 | 55,000.00 |
| Item 24 | 0.00 | 152,625.00 |
| Item 25 | 0.00 | 29,730.29 |
| Item 26 | 0.00 | 436.01 |
| Accrued income | 0.00 | 54,904.09 |
| To balance... 13,110,463.44 | | |

The amounts stated in Schedule A of said letter as "accrued income" correctly reflect the amounts of accrued interest and dividends as of July 13, 1925, not then received by the trustees and not reflected in the current quotations of the securities comprising said trust funds. The balance of the figures in said Schedule A correctly reflect the fair market value on July 13, 1925, of the securities comprising said trust funds.

(14) Under date of March 8, 1929, the respondent mailed to the petitioner a notice finally determining a deficiency in gift tax for the year 1925 of $2,465,681.20, the same amount as was tentatively determined in said letter of January 29, 1929. A copy of such notice of deficiency dated March 8, 1929, is attached hereto and made a part hereof and marked "Exhibit A."

Wherefore the petitioner prays that this board may hear the proceeding and determine:

First. That there was no deficiency in petitioner's gift tax for the year 1925, for the reason that section 319 of the revenue act of
16 1924, as amended, is invalid under section 9 of Article I of the Constitution of the United States in that it imposes a direct tax levied without apportionment according to population, and is also invalid under the fifth amendment to the Constitution in that the classification made is arbitrary and the graduated rates result in a deprivation of property without due process of law.

Second. That there was no deficiency in petitioner's gift tax for the year 1925, for the reason that the petitioner did not, by terminating in that year his power to revoke trusts established by him in 1917, make a transfer by gift of any property within the meaning of the gift tax law.

Third. That there was no deficiency in petitioner's gift tax for the year 1925 for the reason that section 319 of the revenue act of 1924, as amended, imposes no tax upon the termination of power to revoke trusts created prior to the enactment of the said act.

Fourth. That in any event the deficiency asserted by respondent should be reduced by eliminating from the amount subject to gift tax the items aggregating $116,548.72, representing the income accrued on the trusts on July 13, 1925, because no power to revoke with respect to such income existed or was terminated in 1925.

ARTHUR A. BALLANTINE,
GEORGE E. CLEARY,
*Counsel for the Petitioner.*

Office and post-office address, 31 Nassau Street, New York, N. Y.

17 [*Duly sworn to by Murry Guggenheim; jurat omitted in printing.*]

18 *Exhibit A to petition*

Office of Commissioner of Internal Revenue.
Address reply to Commissioner of Internal Revenue and refer to MT-ET-GT-C1-68-JEK.
District of 2d New York.
Gifts made by Murry Guggenheim.
Calendar year 1925.
Deficiency tax, $2,465,681.20.

MURRY GUGGENHEIM,
*120 Broadway, New York, New York.*

SIR: The Bureau has examined the protest filed on behalf of the above-named donor against the tentative findings set forth in the letter addressed to him by this office under date of January 28, 1929. The deficiency hereby determined amounts to $2,465,681.20, and is fully explained in the attached statement, consisting of one page, showing the action of the bureau with respect to the protest.

In accordance with the provisions of Title III of the revenue act of 1926, you are allowed 60 days from the date of the mailing of this letter (not counting Sunday as the sixtieth day) within which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the said
19 board within the 60-day period prescribed.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed, and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the decision, which has become final, has been made, the unpaid amount of such assessment must be paid upon notice and demand from the collector of internal revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute the enclosed Form 298, waiving (1) your right to file a petition with the United State Board of Tax Appeals and (2) the restrictions on the assessment and collection of such deficiency, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of the estate tax division, Miscellaneous Tax Unit. In the event that you acquiesce in only a part of the determination, the enclosed form of waiver should be executed with respect to the amount of the deficiency to which you agree.

Respectfully,

D. H. BLAIR. (Sgd.)
*Commissioner.*

Enclosures: Statement, waiver form 298.
CLE.

20 MT-ET-GT-Cl-68-JEK—2d New York.
Gifts made by Murry Guggenheim.

The protest arises in connection with the following items:

*Gross gifts*

| Schedule A | Returned | Tentatively determined | Determined |
|---|---|---|---|
| Principal and income of trust, Lucile G. Gimble, beneficiary | 0.00 | 6,805,915.19 | 6,805,915.19 |
| Principal and income of trust, Edmond A. Guggenheim, beneficiary | 0.00 | 6,304,548.25 | 6,304,548.25 |

No evidence has been presented in connection with the protest which warrants any change in the action of the bureau in taxing as gifts the value of the trusts created by the donor for the benefit of his son and daughter. Accordingly, the following computation shows the gift tax liability of the above-named donor:

| | | | |
|---|---|---|---|
| Gross gifts | 167,955.55 | 13,278,418.99 | 13,278,418.99 |
| Deductions | 140,600.00 | 140,600.00 | 140,600.00 |
| Tax liability | 27,355.55 | 13,137,818.99 | 13,137,818.99 |
| Deficiency | 273.55 | 2,465,954.75 | 2,465,954.75 |
| | | 2,465,681.20 | 2,465,681.20 |

The deficiency bears interest at the rate of six per centum per annum from March 15, 1926, to the date of assessment or to the thirtieth day after the filing of a waiver of the restrictions on the assessments, whichever the earlier.

21 Before United States Board of Tax Appeals

[Title omitted.]

*Answer*

Filed June 17, 1929

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer admits and denies as follows:

(a), (b), (c). Admits the allegations in paragraphs (a), (b), and (c).

(e), 1. Admits the allegations in paragraph (e) 1.

(e) 2 to 11, inclusive. For lack of information upon which to base a belief, denies the allegations in paragraphs (e) 2 to 11, inclusive.

(e) 12. Admits the existence of what purports to be a gift-tax return of the petitioner, Murry Guggenheim, for the calendar
22 year 1925, which bears the stamp "Received March 15, 1926, second district, New York, collector of internal revenue." Denies the remaining allegations in paragraph (e) 12.

(e) 13. Admits that the letter dated January 28, 1929, over the signature of R. M. Estes, deputy commissioner, containing an itemized statement of the amounts alleged in paragraph (e) 13, was addressed to the petitioner. Denies the remaining allegations in paragraph (e) 13.

(e) 14. Admits the allegations in paragraph (e) 14.

Denies generally and specifically each and every allegation in taxpayer's petition, not hereinbefore expressly admitted, qualified, or denied.

Wherefore, it is prayed that the petition be denied.

(Signed) C. M. CHAREST,
*General Counsel, Bureau of Internal Revenue.*

Of Counsel:
JOHN D. FOLEY,
*Special Attorney, Bureau of Internal Revenue.*

jdf/6/17/29.

23 Before United States Board of Tax Appeals

Docket No. 43698

MURRY GUGGENHEIM, PETITIONER

*against*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*Stipulation of facts*

Filed at hearing Nov. 5, 1930

It is hereby stipulated and agreed between the parties hereto, by their respective attorneys, that the following facts shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein to be stipulated as true.

1. Petitioner is an individual, who at all times has been a citizen and resident of the United States. During the years 1917 to 1925, inclusive, the petitioner resided at 998 Fifth Avenue, New York, New York, and had his place of business at 120 Broadway, New York, New York.

2. On March 8, 1929, the respondent mailed to the petitioner, at 120 Broadway, New York, New York, a notice of deficiency
24 finding a deficiency in gift tax for the calendar year 1925 of $2,465,681.20. A true copy of said notice of deficiency is attached to the petition herein as Exhibit A thereof. On April 16, 1929, the petitioner filed with the United States Board of Tax Appeals a petition for a redetermination of said deficiency, and

paid the filing fee of $10 required in connection therewith. The entire amount of the alleged deficiency is in controversy.

3. On January 28, 1929, the respondent mailed to the petitioner a letter showing his tentative determination of the deficiency in gift tax for the calendar year 1925. A true copy of said letter is attached hereto, and marked "Exhibit No. 1."

4. Petitioner's name was originally Morris Guggenheim. Prior to 1925 petitioner adopted the name Murry Guggenheim, and that is the petitioner's correct name. Petitioner is the Murry Guggenheim to whom was addressed the notice of deficiency mailed March 8, 1929. Petitioner is the Morris Guggenheim who, on June 28, 1917, executed two certain trust agreements, primarily for the benefit of Edmond A. Guggenheim and Lucile G. Gimbel, respectively, and thereafter executed the amendments to said trust agreements referred to below.

5. On June 28, 1917, the petitioner as settlor, the Commercial Trust Company of New Jersey as corporate trustee, and Clarence L. Myers as individual trustee made and executed, in Jersey City, New Jersey, a trust agreement for the benefit of certain persons, including Edmond A. Guggenheim, the son of the petitioner. On April 1, 1918, the petitioner as settlor, the Commercial Trust Company of New Jersey as corporate trustee, and Clarence L. Myers as individual trustee made and executed, as of June 28, 1917, in complete substitution for said trust agreement of June 28, 1917, a trust agreement, a true copy of which is attached hereto and marked "Exhibit No. 2." Said trust agreement, as amended and modified from time to time, is hereinafter referred to as the "Edmond A. Guggenheim trust."

6. On May 12, 1920, said Edmond A. Guggenheim trust was modified and amended by an instrument executed by petitioner, said Commercial Trust Company of New Jersey, and said Clarence L. Myers, a copy of which is attached hereto and marked "Exhibit No. 3."

7. On March 2, 1921, Clarence L. Myers tendered his resignation as individual trustee under said Edmond A. Guggenheim trust, and sold, transferred, assigned, and delivered to Commercial Trust Company of New Jersey, as trustee of said Edmond A. Guggenheim trust, all of his right, title, and interest in said trust, and the properties and securities comprising the same. A true copy of said letter of resignation is attached hereto and marked "Exhibit No. 4." A true copy of the instrument evidencing said transfer is attached hereto and marked "Exhibit No. 5." said Commercial Trust Company of New Jersey, as trustee, accepted said resignation by, and transfer by, Clarence L. Myers, by a letter dated March 2, 1921, a true copy of which is attached hereto and marked "Exhibit No. 6." The petitioner, by letter of March 2, 1921, to said Commercial Trust Company of New Jersey, directed that, in view of the resignation of the individual trustee, an individual trustee, should be dispensed with in the performance of the

trust. A copy of said letter is attached hereto and marked "Exhibit No. 7."

8. On March 3, 1921, said Edmond A. Guggenheim trust was amended and modified by an instrument executed by petitioner and Commercial Trust Company of New Jersey, a copy of which is attached hereto and marked "Exhibit No. 8."

9. On May 5, 1921, said Edmond A. Guggenheim trust was amended and modified by an instrument executed by petitioner, Commercial Trust Company of New Jersey, Louis F. Rothschild, and Clarence L. Myers, a true copy of which is attached hereto and marked "Exhibit No. 9."

10. On November 16, 1923, said Edmond A. Guggenheim trust was amended and modified by an instrument executed by petitioner and Commercial Trust Company of New Jersey, a true copy of which is attached hereto and marked "Exhibit No. 10."

27 Said instrument of November 16, 1923, created out of the securities held in the Edmond A. Guggenheim trust a separate trust fund, hereinafter referred to as the "Edmond A. Guggenheim special fund." Since November 16, 1923, there has been no amendment, modification, or change in the trust provisions as to the Edmond A. Guggenheim special fund, and said Edmond A. Guggenheim special fund has been held as a separate trust fund by Commercial Trust Company of New Jersey as trustee. Neither the securities composing said Edmond A. Guggenheim special fund nor the accrued income thereof has been included by respondent in his computation of the amount of petitioner's net taxable gifts.

11. On June 23, 1925, Clarence L. Myers, and on June 26, 1925, Louis F. Rothschild, respectively, stated in writing their desire to relinquish the rights conferred upon them by the instrument of May 5 (Exhibit No. 9), and consented to the vesting of such rights in other persons. Copies of these written statements and consents are attached hereto and marked "Exhibits Nos. 11 and 12," respectively.

12. On July 13, 1925, said Edmond A. Guggenheim trust was modified and amended by an instrument executed by petitioner, Commercial Trust Company of New Jersey, S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, a true copy of which is attached hereto and marked "Exhibit No. 13."

13. Thereafter, on July 13, 1925, said Edmond A. Guggen-
28 heim trust was further amended and modified by an instrument executed by petitioner and Commercial Trust Company of New Jersey, a true copy of which is attached hereto and marked "Exhibit No. 14."

14. The foregoing exhibits, numbered 2 to 14, inclusive, constitute all the modifications and changes in the Edmond A. Guggenheim trust.

15. On June 28, 1917, the petitioner as settlor, the Commercial Trust Company of New Jersey as corporate trustee, and Clarence L. Myers as individual trustee made and executed in Jersey City, New

Jersey, a trust agreement for the benefit of certain persons including Lucile G. Gimbel, the daughter of the petitioner. On April 1, 1918, the petitioner as settlor, the Commercial Trust Company of New Jersey as corporate trustee, and Clarence L. Myers as individual trustee made and executed, as of June 28, 1917, in complete substitution for said trust agreement of June 28, 1917, a trust agreement, a true copy of which is attached hereto and marked "Exhibit No. 15." Said trust agreement, as amended and modified from time to time, is hereinafter referred to as the "Lucile G. Gimbel trust."

16. On May 12, 1920, said Lucile G. Gimbel trust was modified and amended by an instrument executed by petitioner, said Commercial Trust Company of New Jersey, and said Clarence L. Myers, a copy of which is attached hereto and marked "Exhibit No. 16."

29 17. On March 2, 1921, Clarence L. Myers tendered his resignation as individual trustee under said Lucile G. Gimbel trust, and sold, transferred, assigned, and delivered to Commercial Trust Company of New Jersey, as trustees of said Lucile G. Gimbel trust, all of his right, title, and interest in said trust, and the properties and securities comprising the same. A true copy of said letter of resignation is attached hereto and marked "Exhibit No. 17." A true copy of the instrument evidencing said transfer is attached hereto and marked "Exhibit No. 18." Said Commercial Trust Company of New Jersey as trustee accepted said resignation by, and transfer by, Clarence L. Myers, by a letter dated March 2, 1921, a true copy of which is attached hereto and marked "Exhibit No. 19." The petitioner, by letter of March 2, 1921, to said Commercial Trust Company of New Jersey directed that, in view of the resignation of the individual trustee, an individual trustee should be dispensed with in the performance of the trust. A copy of said letter is attached hereto and marked "Exhibit No. 20."

18. On March 3, 1921, said Lucile G. Gimbel trust was amended and modified by an instrument executed by petitioner and Commercial Trust Company of New Jersey, a copy of which is attached hereto and marked "Exhibit No. 21."

19. On May 5, 1921, said Lucile G. Gimbel trust was amended and modified by an instrument executed by petitioner, Commercial
30 Trust Company of New Jersey, Louis F. Rothschild, and Clarence L. Myers, a true copy of which is attached hereto and marked "Exhibit No. 22."

20. On June 23, 1925, Clarence L. Myers, and on June 26, 1925, Louis F. Rothschild, respectively, stated in writing their desire to relinquish the rights conferred upon them by the instrument of May 5, 1921 (Exhibit No. 22), and consented to the vesting of such rights in other persons. Copies of these written statements and consents are attached hereto and marked "Exhibits Nos. 23 and 24," respectively.

21. On July 13, 1925, said Lucile G. Gimbel trust was modified and amended by an instrument executed by petitioner, Commercial Trust Company of New Jersey, and S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, a true copy of which is attached hereto and marked "Exhibit No. 25."

22. Thereafter, on July 13, 1925, said Lucile G. Gimbel trust was further amended and modified by an instrument executed by petitioner and Commercial Trust Company of New Jersey, a true copy of which is attached hereto and marked "Exhibit No. 26."

23. The foregoing exhibits, numbered 15 to 26, inclusive, constitute all the modifications and changes in the Lucile G. Gimbel trust.

24. The copies attached hereto as Exhibits Nos. 1 to 26, in-
31 clusive, are true copies of the originals thereof, and may be accepted by the board as evidence in this case in lieu of the originals.

25. On June 28, 1917, petitioner delivered to Commercial Trust Company of New Jersey as corporate trustee, and Clarence L. Myers as individual trustee, the securities constituting the principal or corpus of the Edmond A. Guggenheim trust, to be held in trust as provided in said trust agreement. Such securities were delivered to Commercial Trust Company of New Jersey on June 28, 1917, at Jersey City, New Jersey. At all times since June 28, 1917, said trustees, the Commercial Trust Company of New Jersey acting alone after the resignation of the individual trustee on March 2, 1921, have continued to hold the physical possession of the entire corpus of said Edmond A. Guggenheim trust, have had the securities of said trust registered or recorded in the name of the trustees or trustee, or of a nominee for the trustees or trustee, have collected and received the entire rents, issues, interest, income, and profits of the Edmond A. Guggenheim trust, and, as provided in said trust agreement, have distributed part of said income to Edmond A. Guggenheim, and have accumulated the balance. At no time since June 28, 1917, has any part of the income of said Edmond A. Guggenheim trust been paid to, or transferred to, the petitioner, or expended for his account or benefit. In 1917 and 1918 the petitioner withdrew certain securities from the trust fund and substituted other
32 securities of equal or greater value therefor, but no such substitution of securities was made subsequent to 1918, and, except as herein stated, no part of the corpus of said Edmond A. Guggenheim trust has been paid or transferred to the petitioner, or expended for his account or benefit.

26. On June 28, 1917, petitioner delivered to Commercial Trust Company of New Jersey as corporate trustee, and Clarence L. Myers as individual trustee, all of the securities constituting the principal or corpus of the Lucile G. Gimbel trust, to be held in trust as provided in said trust agreement. Said securities were delivered to Commercial Trust Company of New Jersey on June

28, 1917, at Jersey City, New Jersey. At all times since June 28, 1917, said trustees, the Commercial Trust Company of New Jersey acting alone after the resignation of the individual trustee on March 2, 1921, have continued to hold the physical possession of the entire corpus of said Lucile G. Gimbel trust, have had the securities of said trust registered or recorded in the name of the trustees or trustee, or of a nominee for the trustees or trustee, have collected and received the entire rents, issues, interest, income, and profits of the said Lucile G. Gimbel, trust, and, as provided in said trust agreement, have distributed part of such income to Lucile G. Gimbel and have accumulated the balance of said income. At
33 no time since June 28, 1917, has any part of the income of said Lucile G. Gimbel trust been paid or transferred to the petitioner, or expended for his benefit or account. In 1917 and 1918 the petitioner withdrew certain securities from the trust fund and substituted other securities of equal or greater value therefor, but no such substitution of securities was made subsequent to 1918, and, except as herein stated, no part of the corpus of the Lucile G. Gimbel trust has been paid to or transferred to the petitioner or expended for his account.

27. Upon the creation, on June 28, 1917, of the Edmond A. Guggenheim trust and the Lucile G. Gimbel trust, and the delivery by the petitioner to the trustees of the securities comprising said trusts which had theretofore been owned by the petitioner, all such securities were charged off the books of petitioner and wholly eliminated from his accounts as assets. The petitioner has not at any time negotiated any loan or secured any credit on the basis of the properties held in the Edmond A. Guggenheim trust or the Lucile G. Gimbel trust, or of his powers under said trust agreements. None of such securities have been registered or recorded in the name of the petitioner or of any nominee of the petitioner since such securities were originally delivered to the trustees of said trusts. The value of the remaining properties owned by the petitioner after the creation, on June 28, 1917, of the Edmond A. Guggenheim trust and the Lucile G. Gimbel trust, has at all times exceeded, in substantial amount, the value of the securities delivered by the petitioner to the trustees on account of said trusts.

34 28. From and after May 5, 1921, the petitioner did not exercise any of the rights or powers of management and control of the trust funds originally reserved to or retained by him by virtue of the fifth and seventh articles of the Edmond A. Guggenheim trust and the Lucile G. Gimbel trust, which powers were relinquished by the petitioner and vested in Louis F. Rothschild and Clarance L. Myers by the instruments of May 5, 1921 (Exhibits Nos. 9 and 22). In so far as any of such powers were exercised after May 5, 1921, by any person other than Commercial Trust Com-

pany of New Jersey, as trustee, they were exercised by Louis F. Rothschild until July 13, 1925, and thereafter by the persons named for that purpose in the amending instruments of July 13, 1925 (Exhibits Nos. 13 and 25).

29. Commercial Trust Company of New Jersey, a corporation organized under the laws of the State of New Jersey, during the years 1917 to 1925 and thereafter, carried on a large and extensive trust-company business. The petitioner at no time has had any financial interest in Commercial Trust Company of New Jersey.

30. During all of the calendar year 1925 the petitioner, his wife, Leonie Guggenheim, his son, Edmond A. Guggenheim, and his daughter, Lucile G. Gimbel, were living. Lucile G. Gimbel and Edmond A. Guggenheim were the only children of petitioner living during the year 1917 or subsequent thereto. The petitioner was born August 12, 1858; Leonie Guggenheim, the wife of the petitioner, was born December 28, 1865; Edmond A. Guggenheim was born January 19, 1888; Lucile G. Gimbel was born April 27, 1894. Prior to June 28, 1917, the petitioner had not made any settlement or created any trust for the benefit of his son, Edmond A. Guggenheim, or his daughter, Lucile G. Gimbel.

35

31. During the year 1917 the petitioner was a partner in the firm of Guggenheim Brothers, was enjoying good health, and was actively engaged in large financial and business enterprises. He has continued as an active member of the firm of Guggenheim Brothers until the present time.

32. On July 13, 1925, the fair market value of the securities constituting the corpus account in the Edmond A. Guggenheim trust was $6,304,548.25, this amount including $61,644.63, representing interest accrued on bonds but not yet received, and dividends declared on stocks but not yet received and not reflected in the market quotations of the bonds and stocks comprising said corpus account.

33. On July 13, 1925, the fair market value of the securities constituting the corpus account of the Lucile G. Gimbel trust was $6,805,915.19, this amount including $54,904.09, representing interest accrued on bonds but not yet received, and dividends declared on stocks but not yet received, and not reflected in the market quotations of the bonds and stocks constituting said corpus account.

36

34. It is stipulated and agreed that the petitioner made no gift in 1925 of the item of $61,644.63, representing accrued income of the Edmond A. Guggenheim trust, or the item of $54,904.09, representing accrued income of the Lucile G. Gimbel trust; that the petitioner reserved no power to revest title in himself to such accrued income and that no such power with respect to such accrued income was terminated in 1925. It is stipulated and agreed that respondent's determination that petitioner made net taxable gifts of $13,137,818.99 in 1925 should be modified by deducting from said amount the sum of $116,548.72, representing said items of accrued income.

35. On March 15, 1926, the petitioner filed with the collector of internal revenue for the second district of New York a gift-tax return for the calendar year 1925. It is stipulated and agreed that a photostatic copy of said return, the original of which is in the possession of the respondent, shall be introduced in evidence.

Dated, June 20, 1930.

ARTHUR A. BALLANTINE,
*Counsel for Petitioner.*
C. M. CHAREST,
*Counsel for Respondent.*

37 *Edmond A. Guggenheim trust, Exhibit No. 1*

O. F. #300-A.

CC—Mr. Arthur A. Ballantine, atty., 31 Nassau Street, New York, N. Y.

JAN. 28, 1929.

MT-ET-GT-68-WLC.
District of second New York.
Gifts made by Murry Guggenheim.
Calendar year 1925.
Tentative deficiency tax, $2,465,681.20.

MURRY GUGGENHEIM, *Donor,*
*120 Broadway, New York, New York.*

SIR: An audit and review of your return on Form 706A for the calendar year 1925 in connection with the supplemental data, submitted by you or obtained upon investigation, have resulted in a tentative determination of a deficiency in the tax amounting to $2,465,681.20, as hereinafter explained.

If you acquiesce in whole or in part in the tentatively determined deficiency, as disclosed in this letter, you are requested to sign the enclosed agreement consenting to the assessment of so much of the deficiency as results from the findings in which you acquiesce and to forward it to the Commissioner of Internal Revenue, Washington,
D. C., marked for the attention of estate tax division, Mis-
38 cellaneous Tax Unit. The assessment thereof will stop the running of interest on the amount assessed until notice and demand for payment by the collector. Until receipt of such notice and demand, no payment should be made with respect to the deficiency.

If you desire to protest these tentative findings, in whole or in part, such protest in writing must be filed in this office within 30 days from the date of this letter. If a protest is presented, it may be accompanied by such brief, or argument, as you may care to offer, and must be supported by all the evidence relied upon. The evidence should be in the form of affidavits, original documents, or certified or verified copies thereof, or other competent evidence. If

a protest is presented, careful consideration will be given to it before the tax liability is finally determined.

An oral hearing is not a prerequisite to the consideration of a protest. If, however, you desire to be accorded a hearing in the bureau, request therefor must be made within 30 days from the date of this communication and, should you desire that the hearing be set for any particular date, your request should so state, and the date suggested by you will be reserved, if possible. All oral hearings relative to these tentative findings will be held only in Washington, D. C. A request for an informal hearing should contain (a) the name of the donor; (b) a reference to the date and symbols appearing on this communication; (c) an itemized schedule of the findings of the bureau to which exception is taken; and (d) a summary statement of the ground relied upon in connection with each exception.

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Should you not appear in person at the hearing, your attention is directed to the rule that a duly executed power of attorney must be filed by anyone desiring to be recognized by the department as agent or attorney in any respect. In general, anyone filing a power of attorney must be authorized to practice before the Treasury Department. (See Treasury Department Circular #230, as supplemented, copies of which may be obtained upon application to the secretary of the committee on enrollment and disbarment, Treasury Department, Washington, D. C.)

If, after consideration of any additional evidence submitted and any arguments advanced by you, a deficiency is finally determined by the bureau, you will, in accordance with the provisions of Title III of the revenue act of 1926, be notified by registered mail of the final determination by the commissioner of the amount of the deficiency, and in the event you do not acquiesce in such final determination, you may within 60 days from the mailing of the letter file a petition with the Board of Tax Appeals. Such portion, if any, of the deficiency tax as may be ultimately sustained will be assessed, together with interest thereon at the rate of 6 per centum per annum from the due date to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier. Such portion of the amount so assessed as is not paid within 30 days from the date of notice and demand for payment by the collector bears interest at the rate of 1 per centum a month from the date of notice and demand until payment is received by the collector unless, however, the commissioner has granted an extension of time for paying the amount assessed, or a part thereof. Where an extension is granted, interest attaches at the rate of 6 per centum per annum to the amount, the time for payment of which is extended, for the period of the extension only, regardless of the date of payment. (For rules and illustrations relating to interest, see article 43, Regulations 67, 1924 edition.)

40

The following itemization shows the tentative findings of the bureau in accordance with the gift-tax law:

| | |
|---|---|
| Gross gifts, herein tentatively determined | $13,278,418.99 |
| Deductions tentatively allowed | 140,600.00 |
| Net amount of taxable gifts herein tentatively determined | 13,137,818.99 |
| On taxable gifts, in the net amount tentatively determined, the tax is | 2,465,954.75 |
| The amount of tax shown by the return (and paid) is | 273.55 |
| Accordingly, a deficiency is tentatively determined in the amount of | 2,465,681.20 |

The return has been verified as filed except as to the following changes:

| 41 Gross gifts, Schedule A | Returned | Tentatively determined |
|---|---|---|
| Principal of revocable trust in favor of daughter, Lucile G. Gimble, created June 28, 1917 (as amended), which right to revoke was surrendered by donor in agreement of July 13, 1925. Corpus account per sheet A, accompanying letter to Commissioner of Internal Revenue dated June 7, 1927. | | |
| Item 1 | 0.00 | $468,600.00 |
| Item 2 | 0.00 | 606,283.75 |
| Item 3 | 0.00 | 232,925.00 |
| Item 4 | 0.00 | $34,375.00 |
| Item 5 | 0.00 | 143,680.00 |
| Item 6 | 0.00 | 1,389,975.00 |
| Item 7 | 0.00 | 396,831.88 |
| Item 8 | 0.00 | 563,501.88 |
| Item 9 | 0.00 | 474,513.75 |
| Item 10 | 0.00 | 151,126.88 |
| Item 11 | 0.00 | 106,000.00 |
| Item 12 | 0.00 | 111,615.00 |
| Item 13 | 0.00 | 354,387.23 |
| Item 14 | 0.00 | 58,000.00 |
| Item 15 | 0.00 | 629,694.08 |
| Item 16 | 0.00 | 287,426.25 |
| Item 17 | 0.00 | 65,312.04 |
| Item 18 | 0.00 | 329,172.04 |
| Item 19 | 0.00 | 55,000.00 |
| Item 20 | 0.00 | 254,375.00 |
| Item 21 | 0.00 | 30,678.30 |
| Item 22 | 0.00 | 796.58 |
| Accrued income | 0.00 | 61,644.63 |

| 42 Gross gifts, Schedule A | Returned | Tentatively determined |
|---|---|---|
| Principal of revocable trust in favor of son, Edmund A. Guggenheim, created June 28, 1917 (as amended), which right to revoke was surrendered by donor in agreement of July 13, 1925. Corpus account per sheet C accompanying letter to Commissioner of Internal Revenue dated June 7, 1927. | | |
| Item 1 | 0.00 | $310,181.25 |
| Item 2 | 0.00 | 135,037.50 |
| Item 3 | 0.00 | 232,925.00 |
| Item 4 | 0.00 | 150,500.00 |
| Item 5 | 0.00 | 34,375.00 |
| Item 6 | 0.00 | 130,771.25 |
| Item 7 | 0.00 | 862,000.00 |
| Item 8 | 0.00 | 395,824.69 |
| Item 9 | 0.00 | $563,503.13 |
| Item 10 | 0.00 | 475,546.88 |
| Item 11 | 0.00 | 160,125.00 |
| Item 12 | 0.00 | 106,000.00 |
| Item 13 | 0.00 | 111,615.00 |
| Item 14 | 0.00 | 279,327.52 |
| Item 15 | 0.00 | 58,000.00 |
| Item 16 | 0.00 | 629,694.08 |
| Item 17 | 0.00 | 382,204.00 |
| Item 18 | 0.00 | 287,426.25 |
| Item 19 | 0.00 | 205,000.00 |
| Item 20 | 0.00 | 127,321.47 |
| Item 21 | 0.00 | 64,308.13 |
| Item 22 | 0.00 | 329,166.71 |
| Item 23 | 0.00 | 55,000.00 |
| Item 24 | 0.00 | 152,625.00 |
| Item 25 | 0.00 | 20,730.29 |
| Item 26 | 0.00 | 436.01 |
| Accrued income | 0.00 | 54,904.09 |
| To balance.. $13,110,463.44 | | |

This case has been audited in accordance with the retroactive provision of the revenue act of 1926 with respect to rates of tax.

Respectfully,

(Signed) R. M. ESTES,
*Deputy Commissioner.*

PC.
Agreement.

*Edmond A. Guggenheim trust, Exhibit No. 2*

TRUST AGREEMENT, made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," party of the first part, and Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having its main office and place of business at number 15 Exchange Place, Jersey
44 City, New Jersey, hereinafter called the "corporate trustee," and Clarence L. Myers, a resident of Red Bank, county of Monmouth, and State of New Jersey, hereinafter called the "individual trustee," the corporate trustee and the individual trustee being hereinafter called the "trustees," parties of the second part.

Whereas, the settlor desires to create a trust of the property and for the purposes hereinafter mentioned.

Now, therefore, this agreement witnesseth:

That, in consideration of the premises, the mutual covenants herein contained and other good and valuable considerations, and of the sum of one dollar ($1.) to him in hand paid by the trustees, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the settlor has given, granted, conveyed, assigned, transferred, set over, and delivered, and by these presents does give, grant, convey, assign, transfer, set over, and deliver unto the trustees, their successors and assigns, the following-described properties, interests, and securities, to wit:

One million three hundred thousand dollars ($1,300,000.) face amount part-paid receipts for subscriptions to Chile Copper Company 6% collateral trust gold bonds, series A, numbered L-224 to L-249, inclusive;

45 Twenty-five hundred (2,500) shares of stock New York and Honduras Rosairo Mining Company;

Three thousand six hundred (3,600) shares stock Sidney Blumenthal & Company, common;

Two thousand seven hundred fifty-four (2,754) shares stock Sidney Blumenthal & Company, preferred;

Five thousand (5,000) shares stock Sidney Blumental & Company, preferred B;

Three thousand and twenty-five (3,025) shares stock Bunker Hill & Sullivan Mining and Concentrating Company;

Four thousand (4,000) shares stock Utah Copper Company;

One hundred thousand (100,000) shares stock Chile Copper Company;

Eighty thousand dollars ($80,000.) par value Braden Copper Mines Company 15-year 6% sinking-fund gold bonds, principal due February 1, 1931;

Five hundred and fifty thousand dollars ($550,000.) par value Chile Copper Company collateral trust 7% 10-year convertible coupon bonds, principal due May 1, 1923;

Together with all the right, title, interest, and estate of the settlor therein or thereto; all of which said properties, interests, and securities hereinafter collectively referred to as the "trust fund" or "original trust fund" have this day been delivered in person by the settlor into the hands of the corporate trustee at its office
46 aforesaid in Jersey City, New Jersey, the receipt whereof by the corporate trustee is hereby acknowledged.

To have and to hold all and singular the above granted and described properties, interests, and securities unto the said trustees, their successors and assigns, in trust for and upon the following uses and purposes and subject to the terms, conditions, powers, and agreements hereinafter set forth:

First. In the manner hereinafter specified, to receive, hold, manage, sell, exchange, invest, reinvest, deal with and dispose of the same and every part thereof, and to collect, recover and receive the rents, issues, interest, income and profits thereof, hereinafter called the "income" thereof; and to pay such income to the extent of thirty thousand dollars ($30,000.) thereof per annum to the son of the settlor, Edmond A. Guggenheim, hereinafter called the "beneficiary," in quarterly installments, payable, respectively, on the first day of January, April, July, and October in each and every year until the expiration of ten (10) years from the date of this instrument, or until the earlier termination of the trust; and to invest the remainder of all such income (less any amount or amounts thereof which the trustees may be required to deduct and withhold therefrom and to pay under any present or future income tax or other law, and after deducting therefrom the commissions of the trustees hereinafter provided for and the proper and necessary expenses of administering the
47 trust) in other property or securities, which shall be when acquired added to the property or securities already held by the trustees hereunder and subject to the same terms and conditions of trust as an integral part of the trust fund. The settlor may at any time, and from time to time, by directions in writing delivered to the trustees, increase the aggregate amount of payments to be made annually to the beneficiary above the yearly rate or sum hereinbefore specified, to any extent not exceeding the full amount of the annual net income of the trust fund; and the settlor may likewise at any time, and from time to time, by directions in writing delivered to the trustees, decrease the aggregate amount of the payments to be made annually to the beneficiary below any amount to which such payments may previously have been increased as herein provided, to any extent down to the amount of such payments first hereinbefore specified.

Second. At the expiration of ten (10) years from the date of this instrument (unless the trust created hereby should be sooner revoked as hereinafter provided) to assign, transfer, convey, pay over, surrender, and deliver the said trust fund, and all the property, money, or securities then comprising the same, together with all income, gains, and profits thereof in the hands of the trustees, to the said

beneficiary, absolutely and free of all restrictions. In the event of the death of the beneficiary prior to the expiration of ten (10) years from the date hereof, the trustee thenceforth until the termination of the trust shall hold, adminster, and apply the trust
48 fund and the income thereof in trust for the use, benefit, and advantage of the child or children of the beneficiary him surviving, as follows: (a) If there be more than one such child so surviving, the trust fund shall be held for the use, benefit, and advantage of all such children alike, and each such child shall have the same beneficial interest in the trust fund and shall be entitled to an equal distributive share of the same; if there be but one such child so surviving, the trust fund shall be held for the use, benefit, and advantage of that child, and he or she shall have the sole beneficial interest in the trust fund and shall be entitled to the whole thereof on distribution; (b) out of the income of the trust fund (less the deductions hereinbefore specified), the trustees shall pay to the guardian or guardians of each such child, if there be more than one, or of the one child, if there be no more, such periodical allowance as in the judgment of such guardian or guardians shall be sufficient and appropriate adequately to provide for the maintenance, care, education, and personal and social needs and requirements of such child, due consideration being given to the position, means, and habit and mode of life of such child until such child shall have arrived at the age of twenty-one (21) years, the balance of such income over and above the amount of such allowance to be invested, reinvested, accumulated, and added to the principal of the trust fund in the manner herein elsewhere specified; (c) when any such child shall have arrived at the age of twenty-one (21) years, if there be more than one
49 such child, the income of the trust fund less the deductions specified shall be equally apportional between all such children, and one full equal portion of such income shall thereafter be paid to the child so arriving at the age of twenty-one (21) years, and the other full equal portions shall be paid to the others of such children, respectively, as and when they severally arrive at the said age, until the expiration of twenty (20) years from the date of the death of the beneficiary, but if there be but one such child, the entire income of the trust fund (less the deductions specified) shall thereafter be paid to that child until the expiration of twenty (20) years from the date of the death of the beneficiary; (d) at the expiration of twenty (20) years from the last mentioned date, the trust fund and all accumulations of income thereon shall be divided into as many equal portions as there were children of the beneficiary surviving him at the time of his death, if there were more than one, and one such equal portion shall be paid over, surrendered, and delivered to each such child then living, but if there were but one such child so surviving, the entire trust fund and all accumulations thereon shall be paid over, surrendered, and delivered to that child if then living; (e) if at any time between the date of the death of the beneficiary and the expiration of

the said twenty (20) years any such child shall die, the trust fund and all accumulations thereon shall nevertheless remain intact and shall not be divided as aforesaid until the expiration of the said twenty (20) years, at which time the portion thereof to which such child would then have been entitled had he or she lived shall be paid
50 over, surrendered, and delievered or otherwise distributed as he or she may have by his or her last will directed, or, if there be no such last will, as the laws of his or her domicile may prescribe in case of intestacy.

In the event of the death of the beneficiary prior to the expiration of ten (10) years from the date hereof leaving no children him surviving, the trust fund and all accumulations thereon shall thereupon be paid over, surrendered, and delivered to the settlor, or in case of his prior decease, to the executors or administrators of his estate.

Third. The settlor hereby expressly reserves to himself the privilege of increasing the principal of the trust fund, from time to time, by adding thereto properties, interests, and securities, which the trustees shall receive, hold, manage, sell, exchange, invest and reinvest, deal with, and dispose of in the same manner as herein specified in respect of the properties, interests, and securities forming the original trust fund.

Fourth. The trust fund created hereby shall comprise the properties, interests, and securities hereinbefore described in their present form, or in any substituted form resulting from the sale or exchange of the same or otherwise, and also such additional or other properties, interests, or securities as may from time to time be added to the trust fund by the settlor, or substituted by the settlor for properties or securities previously comprised in the trust fund, or as may
51 from time to time be acquired by the trustees through investments or reinvestments for the trust fund made in the manner herein provided, of the proceeds of any sales of trust property, or of the income of the trust fund or any part of such income, or of any other monies belonging, appertaining, or devoted to the uses of the trust.

Fifth. Sales, exchanges, and substitutions of property or securities comprising the trust fund, and investments and reinvestments for the trust fund, and of income subject to investment or reinvestment, shall be made if, when and as directed in writing by the settlor, to whom alone is reserved the right of deciding upon and authorizing the making of any and all such changes in the trust fund caused by sales, exchanges and substitutions of property or securities comprising the trust fund and investments and reinvestments of the trust fund and of income subject to investment or reinvestment, and the right of causing such changes to be effectuated; and the trustees shall be fully protected in making any such sales, exchanges, substitutions, investments and reinvestments as shall be directed in writing by the settlor, and shall not be liable or responsible in any way for depreciation or loss incurred by reason of any

such sales, exchanges, substitutions, investments or reinvestments so made. No purchaser upon any sale by the trustees shall be bound to see to the application of purchase money arising therefrom, or to inquire into the authority, validity, expediency or propriety of any such sale.

52 Sixth. The trustees shall, if requested by the settlor in writing so to do, cause the securities which may, from time to time, comprise the trust fund, or any part thereof, to be registered in their names as trustees hereunder, in which case the properties or securities shall stand in the name of "Commercial Trust Company of New Jersey and Clarence L. Myers, trustees under the trust agreement of Morris Guggenheim for Edmond A. Guggenheim, dated the 28th day of June, 1917," or in such other name as the settlor may select.

Seventh. Subject in each and every instance to the written approval and directions of the settlor, the trustees are authorized and empowered to do and perform the following: (1) To vote in person or by proxy upon all stocks or other securities held by it; (2) to exchange the securities of any corporation or company for other securities issued by the same, or by any other corporation or company; (3) to consent to the reorganization, consolidation or merger of any corporation or company, or to consent to the sale or lease of its property, or any portion thereof, to any person, corporation or company, or to the acquisition through purchase or lease from any person, corporation or company of his or its property or any portion thereof, and upon such reorganization, consolidation, merger, sale, purchase or lease to exchange the securities held by it for the securities issued in connection therewith; (4) to pay all assessments, subscriptions and other sums of money necessary to the pro-

53 tection of its interests as holder of any stocks, bonds or other securities of any corporation or company; (5) to exercise any option contained in any stocks, bonds or other securities, for the conversion of the same into other securities; (6) to take advantage of any rights to subscribe for additional stocks, bonds or other securities, and to make any and all necessary payments therefor.

In the event that the settlor shall have omitted to give any written directions, the trustees may request in writing from the settlor such written directions as to the action to be taken with regard to any of the matters set forth in this article, and if the settlor shall neglect or refuse or be unable to give such written directions for a period of thirty (30) days after such request, the trustees are hereby authorized and empowered to take such action as they may deem proper and desirable with regard to such matters.

Eighth. In case of securities taken or purchased for the trust fund at a premium, the trustees shall not be required to set aside any part of the income thereof as a sinking fund to retire or absorb such premium, or to make any other provision for possible depreciation

in the value of the securities constituting the trust fund by reason of the approaching maturity of said securities, or otherwise.

Ninth. The trustees are authorized and empowered to pay out of the income received from the trust fund any and all taxes
54 which may become properly payable, from time to time, under the laws of the United States, or of any State, county, or municipality in respect of said trust property, or in respect of any transfer thereof or transaction affecting the same, and to affix and cancel tax stamps in accordance with the provisions of said laws. All taxes and all expenses connected with the administration of the said trust, including the trustees' commissions, payable out of income, shall be deducted from and paid out of the income of the trust fund.

Tenth. The settlor covenants and agrees to make, execute, and deliver in due form of law such other and further assignments, conveyances or other instruments as the trustees may deem requisite or necessary to effectuate the purpose hereof.

Eleventh. Anything herein to the contrary notwithstanding, the settlor may, from time to time during the continuance of the trust, by instrument in writing executed and acknowledged in the manner required for a deed of real property, so as to enable it to be recorded in the State of New Jersey, and delivered to the trustee, or their successors, modify or alter in any way or revoke in whole or in part this agreement and the trust then existing, and the estates and interests in property hereby created and provided for, and in case of such modification, alteration or revocation said instrument shall direct the disposition to be made of the trust fund, or of the part
55 of the trust fund affected by such modification, alteration, or revocation, and upon delivery of such instrument to the trustees, or their successors, said instrument shall take effect according to its provisions, and the trustees, or their successors, shall make, execute and deliver all such documents, and make such conveyances, transfers and deliveries of property, rights, interests and securities as may be necessary or proper in order to carry the same into effect, and no one shall have any right, interest, or estate under this agreement, except subject to and in accordance with such modification, alteration or revocation thereof; provided, however, that no power of revocation in this agreement reserved or contained shall affect the income at any time received or accrued upon the trust fund, or upon the properties, interests or securities originally or at any time comprised therein, or affect any accumulations or investments of such income; but the legal ownership and title of the trustees and the beneficial ownership and title of the beneficiary, or beneficiaries, in and to such income shall be and remain absolute and indefeasible, subject only to such directions as the settlor may give to the trustees under the powers herein reserved or contained, as to the respective proportions of income to be paid over or accumulated, or as to the investment or reinvestment of accumulations or varying the respective

shares of the beneficiaries in the income to be paid over or accumulated.

Twelfth. The corporate trustee shall be entitled to receive as compensation for its services in the administration of this trust,
56 a commission of one-half of one per cent (.01½%) per annum upon all income received under the trust, and is hereby authorized to deduct such commission from the said income. In case of the termination of the trust by revocation as hereinbefore provided prior to the expiration of five (5) years from the date hereof, the corporate trustee shall be entitled to receive, in addition to the aforesaid commission theretofore received by it, a commission of ten thousand dollars ($10,000). In case of the termination of the trust otherwise than by revocation, the corporate trustee shall be entitled to no other or further commission than herein first specified. The individual trustee shall be entitled to receive as compensation for his services a commission at the rate of five hundred dollars ($500.) per annum, payable in semi-annual installments on the first day of January and July in each year, while acting as trustee hereunder, and the corporate trustee is hereby authorized to deduct such commission from the said income.

Thirteenth. The trustees by joining in the execution of this instrument signify their acceptance of the trust herein created, and covenant and agree with the settlor that they will faithfully perform the duties thereof according to the best of their skill, knowledge and ability, but the trustees shall not be responsible for any action taken by them in the administration of the trust if taken in accordance herewith or with any written direction to them by the settlor, or for any mistake in judgment or decreases in value of the trust fund.

57 Fourteenth. This agreement and the trust created by this agreement shall be performed, executed, and administered in the State of New Jersey, and the laws of the State of New Jersey shall govern the validity, interpretation, administration, and enforcement thereof. The properties, interests, and securities comprising the trust fund, together with the income thereof, shall at all times until the termination of the trust be held, kept, and retained by the trustees in the State of New Jersey. Upon the termination of the trust, the trust fund and its accumulations, and the income thereof, shall be conveyed, delivered, and paid over in the State of New Jersey, to the person or persons who shall then be entitled to take and receive the same as herein provided, or to the duly authorized agent, attorney, or representative of such person or persons.

Fifteenth. The individual trustee may at any time resign his trust hereunder by a writing signed by him and delivered to the corporate trustee, accompanied by a proper transfer and release of his title to and interest in the trust fund and properties. The settlor may at any time dispense with an individual trustee in the performance or execution of the trust, or substitute another person for the person originally named as individual trustee hereunder, by a writing signed in duplicate by the settlor and delivered to the individual trustee and the corporate trustee; and upon delivery of such writing, the trustee-

ship of the person so originally named shall be rendered va-
58 cant. In the event of the death, resignation, disability, or substitution of the individual trustee, the trusteeship thereby rendered vacant may be filled by the appointment in writing of the settlor delivered to the corporate trustee, and thereupon the person so designated upon his written acceptance of the appointment duly acknowledged and deposited with the corporate trustee shall become vested with all the rights, powers, duties, and obligations of the individual trustee originally named in this agreement; if, however, the death, resignation, or disability of the individual trustee occur after the demise of the settlor, such vacant trusteeship may be filled by appointment by a court of the State of New Jersey of competent jurisdiction.

Sixteenth. The corporate trustee shall have the custody of the trust fund and the accumulations thereon, and may receive, collect, sue, and receipt for and disburse and apply the income of the trust fund, as well as do and perform all ministerial acts and duties involved in the administration of the trust, including the making, signing, and indorsing of checks, drafts, bills, notes, and other commercial paper, and the depositing of moneys, independently of the individual trustee, and in its own name, without the joint action of the individual trustee in so doing; provided, however, that access to the vault or place of safe deposit wherein the properties and securities comprising the trust fund are kept shall be had, and the depositing therein and withdrawal therefrom of any such properties
59 or securities shall be done, jointly by an officer of the corporate trustee and the individual trustee and in the presence of both; that the assignment, transfer, sale, or exchange of any stocks, bonds, or other corporate or other securities shall be executed and effected by the joint action of both trustees and in the name of both; and that all matters connected with the execution of the trust calling for the exercise of judgment and discretion shall likewise require the concurrence and joint action of both trustees. Notwithstanding, however, the death, resignation, or disability of the individual trustee, the settlor may at his option, or the court aforesaid after the death of the settlor may in its discretion, dispense with an individual trustee in the performance and execution of the trust by omitting or failing to appoint such trustee, in which case, as well as during any interval pending such appointment, the corporate trustee shall be clothed with and shall be empowered to exercise all the rights and powers vested in the trustees under this agreement, to the same extent and with the like effect as if the corporate trustee had originally been made the sole trustee hereunder, and all provisions herein relative to the action of the individual trustee hereunder shall be held for nought.

Seventeenth. It is mutually agreed that these presents shall extend to and be obligatory upon the executors, administrators, legal representatives and successors, respectively, of the parties hereto.

60 Eighteenth. This agreement, made as of the same date as a prior trust agreement of the same import, between the same

parties and in the interest of the same beneficiary, is made for the purpose of embodying in one document the said prior agreement, and certain further stipulations affecting the terms of the trust now evidenced by separate supplemental instruments, and for the further purpose of more closely defining the intent of the settlor, and shall apply to and govern the said trust and the execution and administration thereof as if the same had been originally created hereby; to which end the said prior trust agreement and supplemental instruments shall be, and hereby are, superseded by this agreement, and shall be and are of no further force and effect; provided, however, that all acts or things hitherto done or performed by any of the parties hereto under and by virtue of the said prior trust agreement and of agreements supplemental thereto are hereby ratified, approved, and confirmed, and shall be considered and held as having been done and performed under and pursuant to this agreement. In furtherance hereof, the said prior trust agreement made as of the 28th day of June, 1917, and supplemental instruments have coincidentally with the execution and delivery of this agreement been marked "Superseded and canceled."

This instrument is made in duplicate, each of which is an original, but both taken together shall be deemed one and the same instrument.

61 In witness whereof, the settlor has hereunto set his hand and seal, and the corporate trustee has caused these presents to be signed by its president, and its corporate seal to be hereunto affixed and attested by its secretary, and the individual trustee has hereunto set his hand and seal, as of the day and year first above written.

Signed, sealed, and delivered
in the presence of—

W. F. W. VEYSEY. MORRIS GUGGENHEIM. [SEAL.]

W. F. W. VEYSEY. CLARENCE L. MYERS. [SEAL.]

COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*

Attest:
J. S. PERKINS, *Secretary.*
[SEAL.]

62 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on the 1st day of April, A. D., 1918, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

J. FISHER ANDERSON,
*Master in Chancery of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 1st day of April, A. D. 1919, before me the subscriber personally appeared Jay S. Perkins, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by J. W. Harden-
63 bergh, who was at the date of execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

JAY S. PERKINS.

Subscribed and sworn to before me the date aforesaid.

J. FISHER ANDERSON,
*Master in Chancery of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 1st day of April, A. D. 1918, before me the subscriber personally appeared CLARENCE L. MYERS, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

J. FISHER ANDERSON,
*Master in Chancery of New Jersey.*

64 *Edmond A. Guggenheim trust, Exhibit No. 3*

THIS INSTRUMENT, made and executed in Jersey City, New Jersey, on the 12th day of May, 1920, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," and Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at number 15 Exchange Place, Jersey City, New Jersey, as trustee, and Clarence L. Myers, a resident of Red Bank, county of Monmouth, State of New Jersey, as trustee, hereinafter called the "trustee."

Whereas, by a certain trust agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between the above-named settlor and the above-named trustee, the settlor did create a trust of and in certain property and for certain purposes as in the said agreement specified, for the benefit of the certain person or persons therein named; and

Whereas, the settlor, pursuant to the power reserved to him in and by the eleventh paragraph of the said trust agreement of the

28th day of June, 1917, desires to modify and amend the said trust agreement and the trust as it now exists thereunder.

Now, therefore, this instrument witnesseth:

That the settlor, by virtue of the power and authority vested
65 in him pursuant to the provisions of the said eleventh paragraph of the said trust agreement of the 28th day of June, 1917, does hereby modify and amend the said trust agreement and the trust existing thereunder by incorporating in the said trust agreement, as an addition to the first paragraph thereof and as a further term or condition of the said trust, the following provision:

"In respect to the accumulated income of the trust fund at any time accrued and received thereon and held by the trustees as an addition to and part of the principal of the trust fund, whether in the shape of money or other funds or in the shape of securities or other property, and either before or after investment or reinvestment, the Settlor may at any time and from time to time, by directions in writing signed by him and delivered to the trustees, cause and require such accumulated income, or any part or parts thereof, to be assigned, transferred, conveyed, paid over, surrendered and delivered by the trustees to the beneficiary of the said trust, Edmond A. Guggenheim, absolutely and free of all restrictions."

In witness whereof, the settlor has hereunto set his hand and seal, and the corporate trustee has caused these presents to be signed by its president and its corporate seal to be hereunto affixed and
66 attested by its secretary, and the individual trustee has hereunto set his hand and seal, on the day and year first above written.

Signed, sealed, and delivered
in the presence of—

WILLARD C. FISK.

MORRIS GUGGENHEIM. [SEAL.]

CLARENCE L. MYERS. [SEAL.]

COMMERCIAL TRUST COMPANY OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*

Attest:
J. S. PERKINS, *Secretary.*
[SEAL.]

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 12th day of May, A. D. 1920, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him

the contents thereof, he did acknowledge that he signed,
67 sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

WILLARD C. FISK,
*Master in Chancery of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 12th day of May, A. D. 1920, before me the subscriber personally appeared Jay S. Perkins, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by John W. Hardenbergh, who was at the date of the execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

JAY S. PERKINS.

Subscribed and sworn to before me, the date aforesaid.

WILLARD C. FISK,
*Master in Chancery of New Jersey.*

68 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this day of , A. D. 1920, before the subscriber personally appeared Clarence L. Myers, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

WILLARD C. FISK,
*Master of Chancery of New Jersey.*

*Edmond A. Guggenheim trust, Exhibit No. 4*

JERSEY CITY, N. J., *March 2, 1921.*

COMMERCIAL TRUST COMPANY OF NEW JERSEY,
*15 Exchange Place, Jersey City, N. J.*

Mr. MORRIS GUGGENHEIM,
*15 Exchange Place, Jersey City, N. J.*

GENTLEMEN: I hereby tender my resignation as individual
69 trustee of the trust for the benefit of Edmund A. Guggenheim, existing by virtue of the trust agreement dated as of the 28th day of June, 1917, between yourselves and the undersigned and of

any agreement or instruments amendatory thereof or supplementary thereto; this resignation to take effect immediately upon its acknowledgment by you.

As provided in article fifteenth of the trust agreement of June 28, 1917, I enclose herewith a transfer and release of my title to and interest in the trust fund and properties.

Very truly yours,

CLARENCE L. MYERS.

*Edmond A. Guggenheim trust, Exhibit No. 5*

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Clarence L. Myers, the person named as individual trustee in a certain trust agreement dated as of the 28th day of June, 1917, between Morris Guggenheim and Commercial Trust Company of New Jersey, corporate trustee, and Clarence L. Myers, of Red Bank, county of Monmouth, State of New Jersey, as individual trustee, creating a certain trust for the benefit of Edmond A. Guggenheim, and in certain agreements or instruments amendatory thereof or supplementary thereto, in consideration of one dollar lawful money of the United States to him in hand paid before the sealing and
70 delivery of these presents, the receipt whereof is hereby acknowledged, has sold, assigned, transferred, set over, released, surrendered, and delivered, and by these presents does sell, assign, transfer, set over, release, surrender, and deliver, unto Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, as trustee under the trust agreement aforesaid, and the amendments thereof and supplements thereto, all his right, title, and interest in and to the trust fund and properties comprised in the said trust and all his right, title, and interest in, to, and under the said trust agreement and the amendments thereof and supplements thereto, to have and to hold unto the said Commercial Trust Company of New Jersey, as trustees, as aforesaid.

In witness whereof, the said Clarence L. Myers has signed, sealed, and delivered these presents in Jersey City, New Jersey, on this 3rd day of March, 1921.

CLARENCE L. MYERS. [SEAL.]

Witness:
WM. V. TOFFEY.

List of securities held by Commercial Trust Company of New Jersey and Clarence L. Myers, trustees under the trust agreement of Morris Guggenheim for Edmond A. Guggenheim, dated the 28th day of June, 1917, at the close of business March 3rd, 1921:

71 2,300 shares Utah Copper Corporation.
102,750 " Chile Copper Company.

$506,500 par value Chile Copper Company coll. trust 7% gold bonds.
1,300,000 par value Chile Copper Company coll. trust series A 6% gold bonds.
174,000 par value United States of America Victory L. L. 4¾% notes.
2,500 shares New York & Honduras Rosario Mining Company.
2,754 shares Sidney Blumenthal Co. first preferred.
5,000 shares Sidney Blumenthal Co. second preferred.
3,025 shares Bunker Hill & Sullivan Mining & Concentrating Co.

COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By J. S. PERKINS, *V. P.*,
CLARENCE L. MYERS,
*Trustees under the Trust Agreement of Morris Guggenheim for Edmond A. Guggenheim, Dated the 28th Day of June, 1917.*

Attest correct:
GEO. LETTERHOUSE.

72 *Edmond A. Guggenheim trust, Exhibit No. 6*

JERSEY CITY, N. J., *March 2, 1921.*

Mr. CLARENCE L. MYERS,
*15 Exchange Place, Jersey City, N. J.*

DEAR SIR: Receipt is hereby acknowledged of your letter of March 2nd, 1921, addressed to the undersigned, tendering your resignation as individual trustee of the trust for the benefit of Edmond A. Guggenheim, existing by virtue of the trust agreement dated as of the 28th day of June, 1917, between yourself and the undersigned and of any agreements or instruments amendatory thereof or supplementary thereto. Receipt is also acknowledged of the transfer and release in favor of the Commercial Trust Company of New Jersey of your title to and interest in the trust fund and properties.

Since your resignation was made effective upon its acknowledgment by the undersigned, this letter of acknowledgment will serve as evidence of the fact that your resignation became effective on the date hereof.

Very truly yours,

COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*
MORRIS GUGGENHEIM.

73 *Edmond A. Guggenheim trust, Exhibit No. 7*

Murry Guggenheim, 120 Bro'dway, New York.

JERSEY CITY, N. J., *March 2, 1921*

COMMERCIAL TRUST COMPANY OF NEW JERSEY,
*15 Exchange Place, Jersey City, N. J.*
Mr. CLARENCE L. MYERS,
*15 Exchange Place, Jersey City, N. J.*

GENTLEMEN: Referring to the trust agreement dated as of the 28th day of June, 1917, between yourself and the undersigned, creating a trust for the benefit of Edmond A. Guggenheim, and to the instruments or agreements amendatory thereof or supplementary thereto, and in view of the resignation of Clarence L. Myers as individual trustee of the said trust under the said agreement and the amendments thereof and supplements thereto this day tendered, please be advised that, as authorized by the fifteenth article of the said trust agreement, an individual trustee is hereby dispensed with in the performance and execution of the said trust.

Signed and delivered in duplicate.

Very truly yours,

MORRIS GUGGENHEIM.

74 *Edmond A. Guggenheim trust, Exhibit No. 8*

THIS INSTRUMENT, made and executed in Jersey City, New Jersey, on the 3rd day of March, 1921, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," and Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at number 15 Exchange Place, Jersey City, New Jersey, as trustee, hereinafter called the "trustee."

Whereas, by a certain trust agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between the above-named settlor and the said Commercial Trust Company of New Jersey and Clarence L. Myers, trustees, and by an instrument between the same parties, dated the 12th day of May, 1920, supplementary to and amendatory of the said trust agreement, the settlor did create a trust of and in certain property, for certain purposes as in the said agreement and instrument specified, for the benefit of the certain person or persons therein named; and

Whereas, the settlor, pursuant to the power reserved to him in and by the eleventh paragraph of the said trust agreement of the 28th day of June, 1917, desires to modify and alter the terms and provisions of the said trust agreement as amended and the terms and conditions of the said trust so created thereunder;

75 Now, therefore, this instrument witnesseth:

That the settlor, by virtue of the power and authority vested in him pursuant to the provisions of the said eleventh paragraph of

the said trust agreement of the 28th day of June, 1917, does hereby modify and alter the terms and provisions of the said trust agreement and of the said instrument of the 12th day of May, 1920, and the terms and provisions of the said trust agreement and of the said instrument of the 12th day of May, 1920, and the terms and conditions of the trust existing thereunder, as follows:

1. By modifying and altering the terms and provisions of the first article of subdivision of the said trust agreement of the 28th day of June, 1917, so that the same shall read as follows:

"First. In the manner hereinafter specified, to receive, hold, manage, sell, exchange, invest, reinvest, deal with and dispose of the same and every part thereof, and to collect, recover and receive the rents, issues, interest, income and profits thereof, hereinafter called the 'income' thereof; and to pay such income to the extent of Thirty thousand dollars ($30,000) thereof per annum to the son of the settlor, Edmond A. Guggenheim, in quarterly instalments, payable, respectively, on the first day of January, April, July, and October in each and every year for and during the natural life of the
76 settlor, and to invest the remainder of all such income (less any amount or amounts thereof which the trustee may be required to deduct and withhold therefrom and to pay under any present or future income-tax law or other law, and after deducting therefrom the commissions of the trustee hereinafter provided for and the proper and necessary expenses of administering the trust) in other property or securities, which shall be when acquired added to the property or securities already held by the trustee hereunder and subject to the same terms and conditions of trust as an integral part of the trust fund; and from and after the death of the settlor, to pay all such income thereafter accruing (less the deductions hereinbefore specified) to the said Edmond A. Guggenheim for and during his natural life. The settlor may at any time, and from time to time, by directions in writing delivered to the trustee, increase the aggregate amount of payments to be made annually to the said Edmond A. Guggenheim above the yearly rate or sum hereinbefore specified, to any extent not exceeding the full amount of the annual net income of the trust fund; and the settlor may likewise at any time, and from time to time, by directions in writing delivered to the trustee, decrease the aggregate amount of the payments to be made annually to the said Edmond A. Guggenheim below any amount to which such payments
77 may previously have been increased as herein provided, to any extent down to the amount of such payments first hereinbefore specified."

2. By modifying and altering the terms and provisions of the second article or subdivision of the said trust agreement of the 28th day of June, 1917, so that the same shall read as follows:

"Second. Upon the death of the said Edmond A. Guggenheim, the trustee thenceforth shall hold, administer and apply the trust

fund and the income thereof in trust for the use, benefit and advantage of the granddaughter of the settlor, the daughter of the said Edmond A. Guggenheim, Natalie Guggenheim, and shall pay the income of the trust fund (less the deductions hereinbefore specified) to the said granddaughter of the settlor, Natalie Guggenheim, for and during her natural life; provided, however, that if at the time of the death of the said Edmond A. Guggenheim the said Natalie Guggenheim shall be under age the trustee shall pay to the duly appointed legal guardian or guardians of the said Natalie Guggenheim, out of the income of the trust fund, such periodical allowance as in the absolute judgment of such guardian or guardians shall be sufficient and appropriate adequate-
78 ly to provide for her maintenance, care, education, and personal and social needs and requirements, due consideration being given to her position, means and habit and mode of life, until she shall have arrived at the age of twenty-one years, the balance of such income over and above the amount of such allowance (less the deductions hereinbefore specified) to be invested, reinvested, accumulated and added to the principal of the trust fund; and when the said Natalie Guggenheim shall have arrived at the age of twenty-one years the entire income of the trust fund thereafter accruing (less the deductions hereinbefore specified) shall be paid to her for and during her naturel life; and upon the death of the said Natalie Guggenheim the said trust fund and all the property, money, and securities then comprising the same, together with all income, gains and profits thereof and all accumulations thereon, in the hands of the trustee, shall be paid over, surrendered and delivered, or otherwise distributed, as she the said Natalie Guggenheim may have by her last will duly and finally admitted to probate directed and appointed, or if there be no such will the same shall be paid over, surrendered and delivered to the duly appointed administrator or administrators of the said Natalie Guggenheim to be by such administrator or administrators disposed of and distributed as the laws of her domicile may prescribe in the case of her intestacy,
79 and upon such payment, surrender, and delivery the trustee shall be discharged of all further duties and obligations in the premises.

"In the event that the said Natalie Guggenheim shall predecease the said Edmond A. Guggenheim, then upon his death the said trust fund and all the property, money, and securities then comprising the same, together with all income, gains, and profits thereof and all accumulations thereof, in the hands of the trustee, shall be paid over, surrendered and delivered, or otherwise distributed as he the said Edmond A. Guggenheim may have by his last will duly and finally admitted to probate directed and appointed, or if there be no such will the same shall be paid over, surrendered and delivered to the administrator or administrators of the said Edmond A. Guggenheim to be by such administrator or administrators disposed of and distributed as the laws of his domicile may prescribe in the

case of his intestacy, and upon such payment, surrender and delivery the trustee shall be discharged of all further duties and obligations in the premises; provided, however, that if both the said Natalie Guggenheim and the said Edmond A. Guggenheim shall die during the lifetime of the settlor, then upon the death of the beneficiary who shall survive the longer the trust fund and all the property, interests and securities then comprising the same, together with
80 all income, gains and profits thereof and all accumulations thereon, in the hands of the trustee, shall be paid over, surrendered and delivered to the settlor, and if both the said Natalie Guggenheim and the said Edmond A. Guggenheim shall die after the death of the settlor, but during the lifetime of the wife of the settlor, Leonie Guggenheim, then upon the death of the beneficiary who shall survive the longer the trust fund and all the property, interests and securities comprising the same, together with all income, gains and profits thereof and all accumulations thereon, shall be paid over, surrendered and delivered to the said wife of the settlor, Leonie Guggenheim.

"In respect to the accumulated income of the trust fund at any time accrued and received thereon and held by the trustee as an addition to and part of the principal of the trust fund, whether in the shape of money or other funds or in the shape of securities or other property, and either before or after investment or reinvestment, the settlor may at any time and from time to time, by direction in writing signed by him and delivered to the trustee, cause and require such accumulated income, or any part or parts thereof, to be assigned, transferred, conveyed, paid over, surrendered and delivered by the trustee to the said Edmond A. Guggenheim and the said Natalie Guggenheim, or either of them, absolutely and free of all restrictions.

81 "Out of income of the trust fund available for accumulation as hereinbefore provided the trustee shall pay to Clarence L. Myers, formerly the individual trustee named in the said trust agreement of the 28th day of June, 1917, the sum of five hundred dollars ($500) per annum for and during the three calendar years beginning with the first day of July, 1921, and ending with the thirtieth day of June, 1924, payable semi-annually."

3. By modifying and altering the terms and provisions of the fifth article or subdivision of the said trust agreement of the 28th day of June, 1917, so that the same shall read as follows:

"Fifth. Sales, exchanges, and substitutions of property or securities comprising the trust fund, and investments and reinvestments for the trust fund, and of income subject to investment or reinvestment, shall be made in accordance with the best judgment and discretion of the trustee after the death of the settlor, and prior thereto if, when and as directed in writing by the settlor so long as he shall live, to whom alone during his lifetime is reserved the right of deciding upon and authorizing the making of any and all such changes in the trust fund caused by sales, exchanges and substitutions of

property, securities comprising the trust fund and investments
82 and reinvestments of the trust fund and of income subject to investment or reinvestment, and the right of causing such changes to be effectuated; and the trustee shall be fully protected in making any such sales, exchanges, substitutions, investments and reinvestments as shall be directed in writing by the settlor, and shall not be liable or responsible in any way for depreciation or loss incurred by reason of any such sales, exchanges, substitutions, investments or reinvestments so made. No purchaser upon any sale by the trustee shall be bound to see to the application of the purchase money arising therefrom, or to inquire into the authority, validity, expediency or propriety of any such sale. The trustee, after the death of the settlor, is authorized to retain and hold for the purposes of the trust any and all of the stocks, bonds or other securities comprised in the trust fund at the time of the death of the settlor, including such thereof as may be unproductive of income, or as may be, or may be deemed to be, hazardous or speculative investments, and in case of losses or expense arising from the exercise of the authority hereby conferred upon the trustee, it shall not be held liable therefor. Without intending to control the lawful discretion of the trustee, should circumstances arise after the death of the settlor to make it necessary
or desirable in its best judgment to alter the investments com-
83 prised in the trust fund, the trustee shall nevertheless understand, from the fact that the stocks, bonds and other securities then comprising the trust fund are included therein, that the settlor believed in their intrinsic and permanent value and would request that the investments represented by such stocks, bonds and securities be not changed except for good and sufficient reason. Investments or reinvestments made by the trustee after the death of the settlor shall be made in such securities or properties as trustees are authorized or permitted to invest in by the laws of the State of New Jersey."

4. By modifying and altering the terms and provisions of the eleventh article or subdivision of the said trust agreement of the 28th day of June, 1917, so that the same shall read as follows:

"Eleventh. Anything herein to the contrary notwithstanding, the settlor may from time to time during the continuance of the trust, by instrument in writing executed and acknowledged in the manner required for a deed of real property, so as to enable it to be recorded in the State of New Jersey, and delivered to the trustee, or its successor, modify or alter in any way or revoke in whole or in part this agreement and the trust then existing, and the estates and interests
in property hereby created and provided for, and in case of
84 such modification, alteration or revocation said instrument shall direct the disposition to be made of the trust fund, or of the part of the trust fund affected by such modification, alteration, or revocation, and upon delivery of such instrument to the trustee, or its successor, said instrument shall take effect according to its provisions, and the trustee, or its successor, shall make, execute, and deliver all such documents, and make such conveyances, trans-

fers, and deliveries of property, rights, interests, and securities as may be necessary or proper in order to carry the same into effect, and no one shall have any right, interest, or estate under this agreement, except subject to and in accordance with such modification, alteration, or revocation thereof; provided, however, that no power of revocation in this agreement reserved or contained shall affect the income at any time received or accrued upon the trust fund, or upon the properties, interests, or securities originally or at any time comprised therein, or affect any accumulations or investments of such income; but the legal ownership and title of the trustee and the beneficial ownership and title of the beneficiary, or beneficiaries, in and to such income shall be and remain absolute and indefeasible, subject only to such direction as the settlor may give to the trustee under the powers herein reserved or contained, as to the respective proportions of income to be paid over or accumulated,
85 or as to the investment or reinvestment of accumulations or varying the respective shares of the beneficiaries in the income to be paid over or accumulated; and provided further that after the expiration of ten (10) years from the 28th day of June, 1917, no power of revocation in this agreement reserved or contained shall be effective to abrogate the trust, or to destroy the principal or corpus of the trust fund, or to withdraw the properties, interests, and securities comprising the trust fund from the operation of the trust (otherwise than by way of exchange, substitution, or sale for reinvestment), but the legal ownership and title of the trustee and the beneficial ownership and title of the beneficiaries in and to the said principal or corpus of the trust fund and the properties, interests, and securities comprising the same shall be and remain absolute and indefeasible, subject only to such directions as the settlor may give to the trustee, and to such modifications or alterations as the settlor may make in the provisions of the trust, under the powers in this agreement reserved or contained, as to the management of the trust fund, the relative interests of the beneficiaries therein, the respective shares of the beneficiaries, their powers with respect to such shares, the time and manner of making distribution, by way of advancement or otherwise, of principal or income, and as to the making of sales, exchanges, and substitutions of property in, and investments and reinvestments for, the trust fund."

86 5. By modifying and altering the terms and provisions of the twelfth article or subdivision of the said trust agreement of the 28th day of June, 1917, so that the same shall read as follows:

"Twelfth. The trustee shall be entitled to receive as compensation for its services in administering this trust during the lifetime of the settlor a commission of two thousand dollars ($2,000) per annum, and, after the death of the settlor, a commission of two thousand five hundred dollars ($2,500) per annum; provided, however, that should the income of the trust fund in any year after the death of the settlor exceed the sum of two hundred and fifty thousand dollars ($250,000), the trustee shall be entitled to receive for such year, as additional compensation, a sum equivalent to one-half

of one per centum (½ of 1%) of the amount of such income in excess of the said sum of two hundred and fifty thousand dollars ($250,000). In case of the termination of the trust by revocation as hereinbefore provided prior to the expiration of five (5) years from the date hereof, the trustee shall be entitled to receive, in addition to the aforesaid commission theretofore received by it, a commission of ten thousand dollars ($10,000). In case of the termination of the trust otherwise than by revocation, the trustee shall be entitled to no other or further commission than herein first specified."

87 6. By modifying and altering the terms and provisions of the said trust agreement of the 28th day of June, 1917, so as to eliminate and cancel the fifteenth article or subdivision thereof, which shall hereafter be disregarded and held for naught.

7. By modifying and altering the terms and provisions of the said trust agreement of the 28th day of June, 1917, including the sixteenth article or subdivision thereof, so as to eliminate and cancel all references in said agreement and in said article or subdivision to the individual trustee, and all provisions in the said agreement and in the said article or subdivision relative to the individual trustee, and to the powers and duties of such trustee shall hereafter be held for naught, an individual trustee having heretofore been dispensed with in the performance of the trust. The word "trustees" wherever it appears in the said trust agreement shall hereafter be read in the singular, as "trustee."

8. The terms and provisions of the said first, second, fifth, eleventh, twelfth, fifteenth, and sixteenth articles or subdivisions, as set forth in the said trust agreement of the 28th day of June, 1917, as amended by the said instrument of the 12th day of May, 1920, shall hereafter be disregarded and held for naught, and the terms and provisions of the said trust agreement and of the said first, second, fifth,

88 eleventh, twelfth, and sixteenth articles or subdivisions thereof as hereby modified and altered and as herein set forth or amended, shall hereafter govern the administration and execution of the trust.

In witness whereof, the settlor has hereunto set his hand and seal, and the trustees has caused these presents to be signed by its president and its corporate seal to be hereunto affixed and attested by its secretary, on the day and year first above written.

MORRIS GUGGENHEIM. [SEAL.]

Signed, sealed, and delivered
in the presence of—
WM. V. TOFFEY.

Attest:
R. S. CARMICHAEL, *Secretary.*

COMMERCIAL TRUST COMPANY,
OF NEW JERSEY,
By W. J. HARDENBERGH, *President.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 3rd day of March, 1921, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and
89 delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.]

WM. V. TOFFEY,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 3rd day of March, 1921, before me the subscriber personally appeared Robert S. Carmichael, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by John W. Hardenbergh, who was at the date of execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

R. S. CARMICHAEL.

Subscribed and sworn to before me, the date aforesaid.

[SEAL]

WM. V. TOFFEY,
*Notary Public of New Jersey.*

90 *Edmond A. Guggenheim trust, Exhibit No. 9*

INSTRUMENT, made and executed in Jersey City, New Jersey, on the 5th day of May, 1921, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," the Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at number 15 Exchange Place, Jersey City, New Jersey, as trustee, hereinafter called the "trustee," and Louis F. Rothschild and Clarence L. Myers, both of the city, county, and State of New York.

Whereas, by a certain trust agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between the above-named settlor and the said commercial trust company of New Jersey and Clarence L. Myers, trustees, and by an instrument between the same parties, dated the 12th day of May, 1920, supplementary to and amendatory of the said trust agreement, and by a

further instrument between the settlor and the Commercial Trust Company of New Jersey, dated the 3rd day of March, 1921, the settlor did create a trust (known as the Edmond A. Guggenheim trust) of and in certain property, for certain purposes as in the said agreement and instruments specified, for the benefit of the certain person or persons therein named; and

Whereas, by the terms of the said agreement and instruments
91 (a) the right of deciding upon and authorizing the making of any and all changes in the trust fund caused by sales, exchanges, and substitutions of property or securities comprising the trust fund and investments and reinvestments of the trust fund and of income subject to investment or reinvestment and the right of causing such changes to be effectuated is reserved to the settlor to be exercised by him by directions in writing to the trustee, and (b) the authority and power of the trustee to do and perform the several acts and things enumerated in the seventh article or subdivision of the said trust agreement of the 28th day of June, 1917 (i. e., to vote in person or by proxy upon all stocks; to exchange securities; to consent to the reorganization, consolidation, or merger of any corporation or to the sale or lease of its property; to pay all the assessments, subscriptions, or other sums of money necessary to the protection of the trustee as holder of any stocks or other securities; to exercise any option contained in any stocks, bonds, or other securities for the convention of the same; and to take advantage of any rights to subscribe for additional stocks, bonds, or other securities and to make any and all necessary payments therefor, and the like), are subject in each and every instance to the written approval and direction of the settlor; and

Whereas, the settlor desires to relinquish and divest himself of the said rights and powers so reserved to or retained by him of
92 directing or controlling the administration of the trust and management of the trust fund and to confer the said rights and powers upon and to vest in the said Louis F. Rothschild, in the first instance, and (contingently) upon and in the said Clarence L. Myers, to the end that the said Louis F. Rothschild (and contingently the said Clarence L. Myers) shall be substituted for the settlor as the person by whom the said rights and powers may be exercised; the intention being that, whereas it has been the purpose of the settlor heretofore that the trust estate should have the benefit of the special knowledge, experience, judgment, and discretion of the settlor in respect of the several matters and things to which the said rights and powers relate, it is now the purpose of the settlor that hereafter the trust estate shall have the benefit of the special knowledge, experience, judgment, and discretion of the said Louis F. Rothschild (or contingently the said Clarence L. Myers) in respect to the said matters and things;

Now, therefore, this instrument witnesseth:

1. That, in consideration of the premises, the settlor has remised, released, relinquished, granted, bargained, sold, assigned, transferred and set over, and by these presents does remise, release, relinquish,

grant, bargain, sell, assign, transfer and set over, unto the said Louis F. Rothschild and the said Clarence L. Myers, severally and respectively, but not jointly, all the rights and powers reserved to or
93 retained by him under and by virtue of the fifth and seventh articles or subdivisions of the said trust agreement of the 28th day of June, 1917, of directing or controlling the administration of the said trust and the management of the trust fund and the action of the said trustee in respect to such administration and management, as set forth in the said articles or subdivisions as so amended; to have and to hold unto and to the exclusive use of the said Louis F. Rothschild and the said Clarence L. Myers, severally and respectively, for and during the life of the settlor; provided, however, that this transfer and conveyance of the said rights and powers to the said Clarence L. Myers shall take effect, if at all, only upon the death of the said Louis F. Rothschild prior to the death of the settlor, or upon his written refusal to exercise the said rights and powers delivered to the said trustee prior to such death, and not otherwise. The said Louis F. Rothschild and the said Clarence L. Myers by becoming parties to this instrument each for himself respectively accepts this transfer and conveyance of the said rights and powers and agrees and undertakes to use his best judgment and discretion in the exercise of the said rights and powers. The said Commercial Trust Company of New Jersey by becoming a party to this instrument consents to the said transfer and conveyance of the said rights and powers to, and their assumption and exercise by, the said Louis F. Rothschild and the said Clarence L. Myers as in this instrument provided.

94 2. The right, title, and interest of the trustee, the Commercial Trust Company of New Jersey, in the trust fund and in the properties, interests, and securities comprising the same, and in the management of the trust fund, arising and existing under and by virtue of the said trust agreement of the 28th day of June, 1917, as supplemented, modified, or amended by the said instruments of the 12th day of May, 1920, and the 3rd day of March, 1921, are hereby in all respects ratified and confirmed, subject to the terms and conditions of the said trust and subject to the exercise during the life of the settlor by the said Louis F. Rothschild or the said Clarence L. Myers of the rights and powers of this instrument conferred upon them severally and respectively.

3. As to any and all matters in respect to which the said rights and powers hereby transferred and conveyed may be exercised, the trustee may request in writing from the said Louis F. Rothschild (or the said Clarence L. Myers) written directions as to the action to be taken, and if the said Louis F. Rothschild (or the said Clarence L. Myers) shall refuse or neglect or be unable for any reason to give such written directions for a period of thirty days after such request has been mailed to his last known place of residence, the trustee is authorized and empowered to take such action in the premises as it may deem proper and desirable under the circumstances. The trustee shall be fully protected in taking any action in respect

95 of which the said rights and powers may be exercised which it may have received written directions from the said Louis F. Rothschild (or the said Clarence L. Myers) to take, as fully to all intents and purposes as it would have been protected in like case had such written directions been given by the settlor under the terms and conditions of the trust as they have heretofore existed.

4. Nothing in this instrument contained shall be deemed to affect or limit the power of the settlor to modify, alter, or revoke the said trust and trust agreement, as said power is reserved to the settlor in the said agreement of the 28th day of June, 1917, and the said instruments supplementary thereto and amendatory thereof. Nor shall anything in this instrument contained, or contained in the said agreement of the 28th day of June, 1917, or the said instruments supplementary thereto or amendatory thereof, be deemed to affect the power of the settlor, by directions in writing given to the trustee, to alter, define, and prescribe the relative interests of the beneficiaries in the trust fund, or the income thereof, their respective shares in the same, their respective powers with respect to such shares, and the time and manner of making distribution to the beneficiaries, or any of them, by way of advancement or otherwise, of principal or income, or both, of the trust fund; which power of the settlor is hereby expressly reaffirmed and reserved.

96 5. The terms, conditions, and provisions of the said agreement of the 28th day of June, 1917, as supplemented, amended, or modified by the said instruments of the 12th day of May, 1920, and the 3rd day of March, 1921, in so far as they are inconsistent with the provisions of this instrument, shall be deemed to be hereby altered and modified; in all other respects the said terms, conditions, and provisions shall remain in full force and effect.

In witness whereof, the settlor has hereunto set his hand and seal and the trustee has caused these presents to be signed by its president and its corporate seal to be hereunto affixed and attested by its secretary, and the said Louis F. Rothschild and the said Clarence L. Myers have hereunto set their hands and seals on the day and year first above written.

Signed, sealed, and delivered
in the presence of—

R. S. CARMICHAEL.

MORRIS GUGGENHEIM. [SEAL.]

COMMERCIAL TRUST COMPANY OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*

97 Attest:
R. S. CARMICHAEL, *Secretary.*
[SEAL.]

WM. V. TOFFEY.

LOUIS F. ROCHSCHILD. [SEAL.]

WM. V. TOFFEY.

CLARENCE L. MYERS. [SEAL.]

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 5th day of May, 1921, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied ( is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.]

WM V. TOFFEY,
*Notary Public of New Jersey.*

98 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 5th day of May, 1921, before me the subscriber personally appeared Robert S. Carmichael, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by J. W. Hardenbergh, who was at the date of execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

ROBERT S. CARMICHAEL.

Subscribed and sworn to before me, the date aforesaid.

[SEAL.]

WM. V. TOFFEY,
*Notary Public, of New Jersey.*

99 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 6th day of May, 1921, before me the subscriber personally appeared Louis F. Rothschild, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.]

WM. V. TOFFEY,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 6th day of May, 1921, before me the subscriber personally appeared Clarence L. Myers, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents

thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.]

WM. V. TOFFEY.
*Notary Public of New Jersey.*

100 *Edmond A. Guggenheim trust, Exhibit No. 10*

INSTRUMENT, made and executed in Jersey City, N. J., on the 16th day of November, 1923, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," and Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at number 15 Exchange Place, Jersey City, New Jersey, as trustee, hereinafter called the "trustee."

Whereas, by a certain trust agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between the above-named settlor and the said Commercial Trust Company of New Jersey and Clarence L. Myers, trustees, as modified and altered by certain supplementary and amendatory agreements or instruments dated, respectively, May 12, 1920, March 3, 1921, and May 5, 1921, the settlor did create a trust of and in certain property, for certain purposes, and for the benefit of certain persons, including the son of the settlor, Edmond A. Guggenheim; and

Whereas, the settlor, pursuant to the power reserved to him in and by the said trust agreement and the said agreements or instruments supplementary thereto and amendatory thereof, "to alter, define and prescribe the relative interests of the beneficiaries in the trust
101 fund, or the income thereof, their respective shares in the same, their respective powers with respect to such shares, and the time and manner of making distribution to the beneficiaries, or any of them, by way of advancement or otherwise, of principal or income, or both of the trust fund," desires further to modify and alter the terms and provisions of the said trust agreement as heretofore supplemented and amended and the terms and conditions of the said trust so created thereunder.

Now, therefore, this instrument witnesseth:

That the settlor by virtue of the power and authority vested in him as aforesaid, does hereby modify and alter the terms and conditions of the said trust by adding to and incorporating in the said trust agreement as heretofore supplemented and amended the following directions and provisions:

1. From and out of the trust fund as heretofore constituted, the trustee shall segregate and set aside five hundred thousand dollars ($500,000) par value of Chile Copper Company 6% collateral trust gold bonds, series A, principal due April 1, 1932. The securities so segregated and set aside, and any other property or securities into

which the same may be converted, or for which the same may be exchanged, or which may be substituted therefor, in whole or in part, or the proceeds realized upon any sale of all or any
102 part of the said securities, shall be held and administered by the trustee as a special trust fund, to be known as the "Edmond A. Guggenheim special fund," for and upon the following uses and trusts:

In trust to receive, hold, manage, sell, exchange, invest, and reinvest the same and every part thereof as provided in the said trust agreement (as heretofore supplemented and amended) with respect to the original trust fund, and to collect, recover, and receive the rents, issues, interest, income, and profits thereof, hereinafter called the "income" thereof, and to pay such income, in quarterly installments, payable respectively on the first day of January, April, July, and October in each year, to the son of the settlor, Edmund A. Guggenheim, for and during his natural life, and upon his death, the said special trust fund, and all the property, money, and securities then comprising the same, together with any undistributed income thereof then in the hands of the trustee, shall be paid over, surrendered, and delivered, or otherwise distributed, as he the said Edmond A. Guggenheim may have by his last will duly and finally admitted to probate directed and appointed, and if there be no such will the same shall be paid over, surrendered, and delivered to the duly appointed administrator or administrators of the said Edmond A. Guggenheim, to be by such administrator or administrators disposed of and distributed as the laws of his domicile may prescribe in case of his intestacy, and upon such payment, surrender, and delivery the trustee shall be discharged of all further duties
103 and obligations in the premises. The income derived from the said special trust fund shall be paid to the said Edmond A. Guggenheim in addition to the income paid to him by virtue of any and all other terms and provisions of the said trust agreement as heretofore supplemented and amended. Deductions from income for the payment of taxes, commissions of the trustee, and expenses of administering the trust shall not be made from income derived from the said special trust fund except to such extent, if any, as income from other properties or funds held by the trustee may be insufficient to provide for such deductions. No power of revocation in the said trust agreement (or in any supplement thereto or amendment thereof) reserved or contained shall affect this disposition and settlement of the said special trust fund, or of the income derived therefrom, but the disposition and settlement of the said special trust fund, and of the income thereof, in this document set forth, shall be and remain final and absolute. In relation to the direction, control, and administration of the said special trust fund and to changes therein by way of sales, exchanges, substitutions, investments, rein-

vestments or otherwise, the provisions of the said trust agreement of June 28, 1917, as heretofore supplemented and amended shall govern.

In witness whereof, the settlor has hereunto set his hand and seal, and the trustee has caused these presents to be signed by its
104 president and its corporate seal to be hereunto affixed and attested by its secretary, on the day and year first above written.

Signed, sealed, and delivered in the presence of—

EBEN C. HASLETT.

MORRIS GUGGENHEIM. [SEAL.]
COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*

Attest:
R. S. CARMICHAEL, *Secretary.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 16th day of November, 1923, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] EBEN C. HASLETT,
*Notary Public of New Jersey.*

105 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 16th day of November, 1923, before me the subscriber personally appeared Robert S. Carmichael, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by J. W. Hardenbergh, who was at the date of execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

ROBERT S. CARMICHAEL.

Subscribed and sworn to before me the date aforesaid.

[SEAL.] EBEN C. HASLETT,
*Notary Public of New Jersey.*

106 *Edmond A. Guggenheim trust, Exhibit No. 11*

GUGGENHEIM,
*New York.*

Morris Guggenheim, Commercial Trust Company of New Jersey, & whom else soever it may concern is to certify that the undersigned desires to relinquish the rights & powers in respect to the Edmond A. Guggenheim trust heretofore conferred upon him by that certain instrument dated May fifth, ninteen twenty-one, between Morris Guggenheim, Commercial Trust Company of New Jersey, Louis F. Rothschild, & Clarence L. Myers & to be relieved of all further duties or responsibilities in the premises & he hereby consents to the vesting of such rights & powers in any other person or persons & accordingly request that appropriate action be taken to that end stop Am mailing certificate to foregoing effect over my signature duly acknowledged.

CLARENCE L. MYERS.

JUNE, 23RD, 1925.

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA,
*At the City of Paris, in the Republic of France.*

I, Damon C. Woods, consul of the United States of America, at the city of Paris, in the Republic of France, duly commissioned and qualified, do certify that, on this 23rd day of June, 1925, before me personally appeared, in said Paris, France, Clarence L. Myers, to me personally known, and known to me to be the individual de-
107 scribed in, whose name is subscribed to and who executed the foregoing instrument and being by me informed of the contents of said instrument he duly acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

DAMON C. WOODS,
*Consul of the United States of America, at Paris, France.*

American consulate general (Jun. 23, 1925), Paris, France.
American Consular Service. $2 fee stamp.

*Edmond A. Guggenheim trust, Exhibit No. 12*

NEW YORK, *June 26th, 1925.*

*To Mr. Morris Guggenheim, Commercial Trust Company of New Jersey, and Whom Else Soever It May Concern:*

This is to certify that the undersigned desires to relinquish
108 the rights and powers in respect to the Edmond A. Guggenheim trust heretofore conferred upon him by that certain instrument dated May 5, 1921, between Morris Guggenheim, Commercial Trust Company of New Jersey, Louis F. Rothschild, and

Clarence L. Myers, and to be relieved of all further duties or responsibilities in the premises; and he hereby consents to the vesting of such rights and powers in any other person or persons, and accordingly requests that appropriate action be taken to that end.

LOUIS F. ROTHSCHILD.

STATE OF NEW YORK,
*County of New York, ss:*

Be it remembered that on this 26th day of June, A. D. 1925, before me the subscriber personally appeared Louis F. Rothschild, who, I am satisfied, is the person named in and who executed the foregoing instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for the purposes therein expressed.

[SEAL.]

CHAS. F. KOGEL,
*Notary Public, New York County.*

N. Y. Co. clerk's No. 167, reg. No. 7080.
Term expires March 30, 1927.

109 *Edmond A. Guggenheim trust, Exhibit No. 13*

INSTRUMENT made and executed in Jersey City, New Jersey, on the 13th day of July, 1925, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at No. 15 Exchange Place, Jersey City, New Jersey, as trustee, hereinafter called the "trustee," and S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, all of the city, county, and State of New York.

Whereas, by a certain agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between the above-named settlor and said Commercial Trust Company of New Jersey and Clarence L. Myers, trustee, and by an instrument between the same parties dated the 12th day of May, 1920, and by a further instrument between the settlor and said Commercial Trust Company of New Jersey, dated the 3d day of March, 1921, and by a further instrument between the above-named settlor, the said Commercial Trust Company of New Jersey, Louis F. Rothschild, and the said Clarence L. Myers, dated the 5th day of May, 1921, and by a further instrument betwen the above-named settlor and said Commercial Trust Company of New Jersey dated the 16th day of November, 1923, the settlor did create a trust (known as the "Edmond A. Guggenheim trust") of and in certain property, for certain
110 purposes as in said agreement and instruments specified, for the benefit of the certain person or persons therein named; and

Whereas, by the terms of the said trust agreements and instruments certain rights and powers of directing or controlling the

administration of the trust and the management of the trust fund were originally reserved to or retained by the settlor and were later transferred to and assumed by the said Louis F. Rothschild and Clarence L. Myers, who now desire to be relieved of their several duties and responsibilities in the premises and who have requested that they be so relieved; and

Whereas, the said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele have consented to assume the said rights and powers and to act in the place and stead of the said Louis F. Rothschild and Clarence L. Myers in the premises.

Now, therefore, this instrument witnesseth:

That the settlor, by virtue of the power and authority vested in him pursuant to the provisions of the eleventh paragraph of the said trust agreement of the 28th day of June, 1917, as amended by the above-mentioned instruments, does hereby modify and alter the said trust agreements and instruments and the trust existing thereunder, as follows:

111 1. By striking out of the said trust agreement and instruments the provisions thereof whereby the rights and powers of directing or controlling the administration of the said trust and the management of the trust fund were originally reserved to and retained by the settlor during his lifetime and were subsequently transferred to and vested in the said Louis F. Rothschild and Clarence L. Myers, and by vesting the said rights and powers in the said S. R. Guggenheim, Simon Guggenheim, and Albert H. Thiele, severally and respectively. The said trust agreement and instruments, therefore, shall hereafter be deemed and held to confer upon and vest in the said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, severally and respectively, during the life of the settlor, the rights and powers aforesaid to the same extent and with like effect as if the said trust agreement and instruments had originally so provided. The rights and powers herein referred to are those originally reserved to or retained by the settlor under and by virtue of the fifth and seventh articles or subdivisions of the said trust agreement of the 28th day of June, 1917, as heretofore amended, being the same certain rights and powers described in the instrument aforesaid between the settlor, the said Commercial Trust Company of New Jersey, Louis F. Rothschild, and Clarence L. Myers, dated the 5th day of May, 1921, and consisting of rights and powers of directing or controlling the administration of the said trust and the management of the trust fund and the action

112 of the trustees in respect to such administration and management as set forth in the said articles or subdivisions as amended. The said rights and powers may be exercised singly and independently by any one of the persons in whom they are hereby vested, or by any two of said persons jointly, or by all three of said persons jointly. The trustee shall be equally protected in acting in the premises whether the said rights and powers are

exercised by one or more of the said persons. Should it ever transpire that directions given by one of said persons are in conflict with directions on the same subject or in the same manner given by another of said persons, the directions on such subject or in such matter in which any two of said persons concur shall prevail and be followed, provided three of said persons are available, but if only two of said persons are available, or if the trustee is given directions by two of said persons only, then in the event of such conflict, the trustee shall take no action in the premises, unless some action in the judgment of the trustee is necessary or desirable for the preservation or due execution of the trust, and if so necessary or desirable the trustee shall have authority to act in accordance with its best judgment and discretion, such conflicting directions notwithstanding. The said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, by becoming parties to this instrument, each for himself respectively accepts the said rights and powers and agrees and undertakes to use his best judgment and discretion in the exercise of the same. The said Commercial Trust Com-
113 pany of New Jersey, by becoming a party to this instrument, consents to the assumption of the said rights and powers and their exercise by the said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele as in this instrument provided.

2. The right, title, and interest of the trustee, the Commercial Trust Company of New Jersey, in the trust fund and in the properties, interests and securities comprising the same and in the management of the trust fund arising and existing under and by virtue of the said trust agreement of the 28th day of June, 1917, as amended, are hereby in all respects ratified and confirmed, subject to the terms and conditions of the said trust and subject to the exercise by the said S. R. Guggenheim, and/or the said Simon Guggenheim, and/or the said Albert E. Thiele of the rights and powers by this instrument conferred upon them severally and respectively.

3. As to any and all matters in respect to which the said rights and powers hereby transferred and conveyed may be exercised the trustee may request in writing from the said S. R. Guggenheim, the said Simon Guggenheim and the said Albert E. Thiele, or the survivor or survivors of them, by letter addressed to their last known place of residence, written directions as to the action to be taken, and if within a period of thirty (30) days after such request has been mailed the trustee shall not receive such written directions from any one or more of the said persons so addressed, the trustee is authorized and empowered to take such action in the premises as it may deem proper and desirable under the circumstances. The trustee
114 shall be fully protected in taking any action in respect of which the said rights and powers may be exercised which it may have received written directions from the said S. R. Guggenheim, or the said Simon Guggenheim, or the said Albert E. Thiele to take, as fully to all intents and purposes as it would have been protected in like case had such written directions been given by the

settlor under the terms and conditions of the trust as they have heretofore existed. The said S. R. Guggenheim, Simon Guggenheim and Albert E. Thiele, jointly and severally, shall not be or become liable or responsible to any person for any act or omission in respect to the rights and powers herein referred to, or for any other cause, matter or thing arising hereunder, save only in the event of wilful fraud or breach of trust.

In witness whereof, the settlor has hereunto set his hand and seal and the trustee has caused these presents to be signed by its president and its corporate seal to be hereunto affixed and attested by its secretary on the day and year first above written.

MORRIS GUGGENHEIM. [L. S.]

Signed, sealed, and delivered
in the presence of—
J. FISHER ANDERSON.

COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By WM. J. FIELD, *President.*

115 Attest:
WM. V. TOFFEY, *Secretary.*

Witness:
J. FISHER ANDERSON.

S. R. GUGGENHEIM. [L. S.]
SIMON GUGGENHEIM. [L. S.]
ALBERT E. THEILE. [L. S.]

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.]

EBEN C. HASLETT,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personally appeared William V. Toffey who,
116 being by me duly sworn, doth depose and make proof to my satisfactory that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by William J. Field who was at the date of execution thereof the president of the

said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

WM. V. TOFFEY.

Subscribed and sworn to before me the date aforesaid.

[SEAL.] EBEN C. HASLETT,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personally appeared S. R. Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the
117 contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] EBEN C. HASLETT,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personally appeared Simon Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] EBEN C. HASLETT,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personally appeared Albert E. Thiele, who, I am satisfied, is one of the persons named in and who executed the
118 foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] EBEN C. HASLETT,
*Notary Public of New Jersey.*

*Edmond A. Guggenheim trust, Exhibit No. 14*

INSTRUMENT made and executed in Jersey City, New Jersey, on the 13th day of July, 1925, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor,"

and Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at No. 15 Exchange Place, Jersey City, New Jersey, as trustee, hereinafter called the "trustee."

Whereas, by a certain trust agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between the above named settlor and said Commercial Trust Company of New Jersey and Clarence L. Meyers, trustee, and by an instrument between the same parties dated the 12th day of May, 1920, and by a further instrument between the settlor and said Commercial Trust Company of New Jersey, dated the 3rd day of March, 1921,
119 and by a further instrument between the above-named settlor, the said Commercial Trust Company of New Jersey, Louis F. Rothschild, and the said Clarence L. Myers, dated the 5th day of May, 1921, and by a further instrument between the above-named settlor and said Commercial Trust Company of New Jersey dated the 16th day of November, 1923, and by a further instrument between the above-named settlor, the said Commercial Trust Company of New Jersey, S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, dated the 13th day of July, 1925, the settlor did create a trust (known as the "Edmond A. Guggenheim trust") of and in certain property, for certain purposes as in said agreement and instrument specified, for the benefit of the certain person or persons therein named; and

Whereas the settlor in the first, second, and eleventh paragraphs of said trust agreement of the 28th day of June, 1917, as amended by the instruments above referred to, reserved certain powers, including powers to control the distribution of the income of the trust and to modify or alter or revoke said trust, and now desires to relinquish and terminate all such powers.

Now, therefore, this agreement witnesseth:

That the settlor, by virtue of the power and authority vested in him pursuant to the provisions of the said eleventh paragraph of the said trust agreement of the 28th day of June, 1917, as
120 amended by the above-mentioned instruments, does hereby modify and alter the said trust agreement and instruments and the trust existing thereunder as follows:

1. By modifying and altering the terms and provisions of the first article or subdivision of the said trust agreement of the 28th day of June, 1917, as amended by the instruments of May 12, 1920, and of March 3, 1921, by eliminating therefrom and cancelling the sentence in the instrument of May 12, 1920, reading as follows:

"In respect to the accumulated income of the trust fund at any time accrued and received thereon and held by the trustees as an addition to and part of the principal of the trust fund, whether in the shape of money or other funds or in the shape of securities or other property, and either before or after investment or re-invest-

ment, the settlor may at any time and from time to time, by directions in writing signed by him and delivered to the trustees, cause and require such accumulated income, or any part or parts thereof, to be assigned, transferred, conveyed, paid over, surrendered and delivered by the trustees to the beneficiary of the said trust, Edmond A. Guggenheim, absolutely and free of all restrictions."

and by eliminating therefrom and cancelling the sentence in the instrument of March 3, 1921, reading as follows:

121 "The settlor may at any time, and from time to time, by directions in writing delivered to the trustee, increase the aggregate amount of payments to be made annually to the said Edmond A. Guggenheim above the yearly rate or sum herebefore specified, to any extent not exceeding the full amount of the annual net income of the trust fund; and the settlor may likewise at any time, and from time to time, by directions in writing delivered to the trustee, decrease the aggregate amount of the payments to be made annually to the said Edmond A. Guggenheim below any amount to which such payments may previously have been increased as herein provided, to any extent down to the amount of such payments first hereinbefore specified."

2. By modifying or altering the terms and provisions of the second article or subdivision of the said trust agreement of the 28th day of June, 1917, as amended by the instrument of March 3, 1921, by eliminating therefrom and cancelling the sentence reading as follows:

"In respect to the accumulated income of the trust fund at any time accrued and received thereon and held by the trustee as an addition to and part of the principal of the trust fund, whether in the shape of money or other funds or in the shape of securities or other property, and either before or after investment or re-

122 investment, the settlor may at any time and from time to time, by directions in writing signed by him and delivered to the trustee, cause and require such accumulated income, or any part or parts thereof, to be assigned, transferred, conveyed, paid over, surrendered and delivered by the trustee to the said Edmond A. Guggenheim and the said Natalie Guggenheim, or either of them, absolutely and free of all restrictions."

3. By modifying and altering the terms and provisions of the said trust argreement of the 28th day of June, 1917, as amended by the instrument of March 3, 1921, by eliminating therefrom and cancelling the eleventh article or subdivision thereof.

4. The rights and powers in the trust fund and in the properties, interests and securities comprising the same and in the management of the trust fund vested in S. R. Guggenheim, Simon Guggenheim and Albert E. Thiele, by the instrument executed on the 13th day of July, 1925, are hereby in all respects ratified and confirmed, sub-

ject to the terms and conditions of the said trust agreement and the instruments modifying and amending the same.

In witness whereof, the settlor has hereunto set his hand and seal and the trustee has caused these presents to be signed by its president and its corporate seal to be hereunto affixed and attested
123 by its secretary on the day and year first above written.

Signed, sealed, and delivered
in the presence of—

MORRIS GUGGENHEIM, [L. S.]

J. FISHER ANDERSON.

COMMERCIAL TRUST COMPANY
OF NEW JERSEY.
WILLIAM J. FIELD, *President.*

Attest:
WM. V. TOFFEY, *Secretary.*
[SEAL.]

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, A. D. 1925, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.]

EBEN C. HASLETT,
*Notary Public of New Jersey.*

124 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, A. D. 1925, before me the subscriber personally appeared William V. Toffey who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by William J. Field, who was at the date of execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

WM. V. TOFFEY.

Subscribed and sworn to before me the date aforesaid.

[SEAL.]

EBEN C. HASLETT,
*Notary Public of New Jersey.*

125 *Lucile G. Gimbel trust, Exhibit No. 15*

TRUST AGREEMENT, made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," party of the first part, and Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having its main office and place of business at number 15 Exchange Place, Jersey City, New Jersey, hereinafter called the "corporate trustee," and Clarence L. Myers, a resident of Red Bank, county of Monmouth, and State of New Jersey, hereinafter called the "individual trustee," the corporate trustee and the individual trustee being hereinafter called the "trustees," parties of the second part.

Whereas, the settlor desires to create a trust of the property and for the purposes hereinafter mentioned.

Now, therefore, this agreement witnesseth:

That, in consideration of the premises, the mutual covenants herein contained and other good and valuable considerations, and of the sum of one dollar ($1) to him in hand paid by the trustees, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the settlor has given, granted, conveyed, assigned, transferred, set over, and delivered, and by
126 these presents does give, grant, convey, assign, transfer, set over, and deliver unto the trustees, their successors and assigns, the following-described properties, interests, and securities, to wit:

One million two hundred ninety thousand dollars ($1,290,000) face amount part-paid receipts for subscriptions to Chile Copper Company collateral trust 6% gold bonds, series A, numbered X–132 to X–135, inclusive, for $10,000 each; L–108 to L–122, inclusive, for $50,000 each; and L–250 to L–259, inclusive, for $50,000, each;

Twenty-five hundred (2,500) shares stock of New York & Honduras Rosario Mining Company;

Three thousand and twenty-five (3,025) shares stock of Bunker Hill & Sullivan Mining and Concentrating Company;

Four thousand (4,000) shares stock of Utah Copper Company;

Nine thousand five hundred (9,500) shares common stock American Smelting and Refining Company;

One hundred thousand (100,000) shares stock of Chile Copper Company;

Eighty-seven thousand dollars ($87,000) par value Braden Copper Mines Company 15-year 6% sinking-fund gold bonds, principal due February 1, 1931;

Five hundred and fifty-three thousand dollars ($553,000) par value Chile Copper Company collateral trust 7% 10-year convertible coupon gold bonds, principal due May 1, 1923;

127 Together with all the right, title, interest, and estate of the settlor therein or thereto; all of which said properties, in-

terests, and securities hereinafter collectively referred to as the "trust fund" or "original trust fund" have this day been delivered in person by the settlor into the hands of the corporate trustee at its offices aforesaid in Jersey City, New Jersey, the receipt whereof by the corporate trustee is hereby acknowledged.

To have and to hold all and singular the above granted and described properties, interests, and securities unto the said trustees, their successors and assigns, in trust for and upon the following uses and purposes and subject to the terms, conditions, powers, and agreements hereinafter set forth:

First. In the manner hereinafter specified, to receive, hold, manage, sell, exchange, invest, reinvest, deal with, and dispose of the same and every part thereof, and to collect, recover, and receive the rents, issues, interest, income, and profits thereof, hereinafter called the "income" thereof; and to pay such income to the extent of thirty thousand dollars ($30,000) thereof per annum to the daughter of the settlor, Lucile G. Gimbel, hereinafter called the "beneficiary," in quarterly installments, payable respectively on the first day of January, April, July, and October in each and every year until the expiration of ten (10) years from the date of this instrument,
128 or until the earlier termination of the trust; and to invest the remainder of all such income (less any amount or amounts thereof which the trustees may be required to deduct and *and* withhold therefrom and to pay under any present or future income tax law or other law, and after deducting therefrom the commissions of the trustees hereinafter provided for and the proper and necessary expenses of administering the trust) in other property or securities, which shall be when acquired added to the property or securities already held by the trustees hereunder and subject to the same terms and conditions of trust as an integral part of the trust fund. The settlor may at any time, and from time to time, by directions in writing delivered to the trustees, increase the aggregate amount of payments to be made annually to the beneficiary above the yearly rate or sum hereinbefore specified, to any extent not exceeding the full amount of the annual net income of the trust fund; and the settlor may likewise at any time, and from time to time, by directions in writing delivered to the trustees, decrease the aggregate amount of the payments to be made annually to the beneficiary below any amount to which such payments may previously have been increased as herein provided, to any extent down to the amount of such payments first hereinbefore specified.

Second. At the expiration of ten (10) years from the date of this instrument (unless the trust created hereby should be sooner revoked as hereinafter provided) to assign, transfer, con-
129 vey, pay over, surrender, and deliver the said trust fund, and all the property, money, or securities then comprising the same, together with all income, gains, and profits thereof in the hands of the trustees, to the said beneficiary absolutely and free of all

restrictions. In the event of the death of the beneficiary prior to the expiration of ten (10) years from the date hereof, the trustees thenceforth until the termination of the trust shall hold, administer, and apply the trust fund and the income thereof in trust for the use, benefit, and advantage of the child or children of the beneficiary her surviving, as follows: (a) If there be more than one such child so surviving, the trust fund shall be held for the use, benefit, and advantage of all such children alike, and each such child shall have the same beneficial interest in the trust fund and shall be entitled to an equal distributive share of the same; if there be but one such child so surviving, the trust fund shall be held for the use, benefit, and advantage of that child, and he or she shall have the sole beneficial interest in the trust fund and shall be entitled to the whole thereof on distribution; (b) out of the income of the trust fund (less the deductions hereinbefore specified), the trustees shall pay to the guardian or guardians of each such child, if there be more than one, or of the one child, if there be no more, such periodical allowance as in the judgment of such guardian or guardians shall be sufficient and appropriate adequately to provide for the maintenance, care, education, and personal and social needs and require-
130 ments of such child, due consideration being given to the position, means, and habit and mode of life of such child, until such child shall have arrived at the age of twenty-one (21) years, the balance of such income over and above the amount of such allowance to be invested, reinvested, accumulated, and added to the principal of the trust fund in the manner herein elsewhere specified; (c) when any such child shall have arrived at the age of twenty-one (21) years, if there be more than one such child, the income of the trust fund less the deductions specified shall be equally apportioned between all such children, and one full equal portion of such income shall thereafter be paid to the child so arriving at the age of twenty-one (21) years, and the other full equal portions shall be paid to the others of such children, respectively, as and when they severally arrive at the said age until the expiration of twenty (20) years from the date of the death of the beneficiary, but if there be but one such child, the entire income of the trust fund (less the deductions specified) shall thereafter be paid to that child until the expiration of twenty (20) years from the date of the death of the beneficiary; (d) at the expiration of twenty (20) years from the last mentioned date, the trust fund and all accumulations of income thereon shall be divided into as many equal portions as there were children of the beneficiary surviving her at the time of her death, if there were more than one, and one such equal portion shall be paid over, surrendered, and delivered to each such child then living, but if there were but one such
131 child so surviving, the entire trust fund and all accumulations thereon shall be paid over, surrendered, and delivered to that child if then living; (e) if at any time between the date of

the death of the beneficiary and the expiration of the said twenty (20) years any such child shall die, the trust fund and all accumulations thereon shall nevertheless remain intact and shall not be divided as aforesaid until the expiration of said twenty (20) years, at which time the portion thereof to which such child would then have been entitled had he or she lived shall be paid over, surrendered, and delivered or otherwise distributed as he or she may have by his or her last will directed, or, if there be no such last will, as the laws of his or her domicile may prescribe in case of intestacy.

In the event of the death of the beneficiary prior to the expiration of ten (10) years from the date hereof leaving no children her surviving, the trust fund and all accumulations thereon shall thereupon be paid over, surrendered, and delivered to the trustee of a certain trust created by the settlor herein for the use and benefit of his son, Edmond A. Guggenheim, by a certain agreement of trust between the settlor and the Commercial Trust Company of New Jersey and Clarence L. Myers, dated as of June 28, 1917, and shall be added to, incorporated in, and become a part of the trust fund created by the agreement of trust last mentioned.

Third. The settlor hereby expressly reserves to himself the
132 privilege of increasing the principal of the trust fund, from time to time, by adding thereto properties, interests, and securities, which the trustees shall receive, hold, manage, sell, exchange, invest and reinvest, deal with and dispose of in the same manner as herein specified in respect of the properties, interests, and securities forming the original trust fund.

Fourth. The trust fund created hereby shall comprise the properties, interests, and securities hereinbefore described in their present form, or in any substituted form resulting from the sale or exchange of the same or otherwise, and also such additional or other properties, interests, or securities as may from time to time be added to the trust fund by the settlor, or substituted by the settlor for properties or securities previously comprised in the trust fund, or as may from time to time be acquired by the trustees through investments or reinvestments for the trust fund made in the manner herein provided, of the proceeds of any sales of trust property, or of the income of the trust fund or any part of such income, or of any other monies belonging, appertaining, or devoted to the uses of the trust.

Fifth. Sales, exchanges, and substitutions of property or securities comprising the trust fund, and investments and reinvestments for the trust fund, and of income subject to investment or reinvestment, shall be made, if, when and as directed in writing by the settlor, to whom alone is reserved the right of deciding upon and author-
133 izing the making of any and all such changes in the trust fund caused by sales, exchanges and substitutions of property or securities comprising the trust fund and investments and reinvestments of the trust fund and of income subject to investment or reinvestment, and the right of causing such changes to be effectuated;

and the trustees shall be fully protected in making any such sales, exchanges, substitutions, investments, and reinvestments as shall be directed in writing by the settlor, and shall not be liable or responsible in any way for depreciation or loss incurred by reason of any such sales, exchanges, substitutions, investments, or reinvestments so made. No purchaser upon any sale by the trustees shall be bound to see to the application of the purchase money arising therefrom, or to inquire into the authority, validity, expediency, or propriety of any such sale.

Sixth. The trustees shall, if requested by the settlor in writing so to do, cause the securities which may, from time to time, comprise the trust fund, or any part thereof, to be registered in their names as trustees hereunder, in which case the properties or securities shall stand in the name of "Commercial Trust Company of New Jersey and Clarence L. Myers, trustees under the trust agreement of Morris Guggenheim for Lucile G. Gimbel, dated the 28th day of June, 1917," or in such other name as the settlor may select.

Seventh. Subject in each and every instance to the written approval and directions of the settlor, the trustees are author-
134 ized and empowered to do and perform the following: (1) To vote in person or by proxy upon all stocks and other securities held by it; (2) to exchange the securities of any corporation or company for other securities issued by the same, or by any other corporation or company; (3) to consent to the reorganization, consolidation or merger of any corporation or company, or to consent to the sale or lease of its property, or any portion thereof, to any person, corporation or company, or to the acquisition through purchase or lease from any person, corporation or company of his or its property or any portion thereof, and upon such reorganization, consolidation, merger, sale, purchase or lease to exchange the securities held by it for the securities issued in connection therewith; (4) to pay all assessments, subscriptions and other sums of money necessary to the protection of its interests as holder of any stocks, bonds or other securities of any corporation or company; (5) to exercise any option contained in any stocks, bonds or other securities, for the conversion of the same into other securities; (6) to take advantage of any rights to subscribe for additional stocks, bonds or other securities, and to make any and all necessary payments therefor.

In the event that the settlor shall have omitted to give any written directions, the trustees may request in writing from the settlor such written directions as to the action to be taken with regard to any of the matters set forth in this article, and if the settlor shall neglect or refuse or be unable to give such written directions
135 for a period of thirty (30) days after such request, the trustees are hereby authorized and empowered to take such action as they may deem proper and desirable with regard to such matters.

Eighth. In case of securities taken or purchased for the trust fund at a premium, the trustees shall not be required to set aside any

part of the income thereof as a sinking fund to retire or absorb such premium, or to make any other provision for possible depreciation in the value of the securities constituting the trust fund by reason of the approaching maturity of said securities or otherwise.

Ninth. The trustees are authorized and empowered to pay out of the income received from the trust fund any and all taxes which may become properly payable, from time to time, under the laws of the United States, or of any State, county, or municipality in respect of said trust property, or in respect of any transfer thereof or transaction affecting the same, and to affix and cancel tax stamps in accordance with the provisions of said laws. All taxes and all expenses connected with the administration of the said trust, including the trustees' commissions, payable out of income, shall be deducted from and paid out of the income of the trust fund.

Tenth. The settlor covenants and agrees to make, execute and deliver in due form of law such other and further assignments, conveyances, or other instruments as the trustees may deem
136 requisite or necessary to effectuate the purpose hereof.

Eleventh. Anything herein to the contrary notwithstanding, the settlor may, from time to time during the continuance of the trust, by instrument in writing executed and acknowledged in the manner required for a deed of real property, so as to enable it to be recorded in the State of New Jersey, and delivered to the trustees, or their successors, modify or alter in any way or revoke in whole or in part this agreement and the trust then existing, and the estates and interests in property hereby created and provided for, and in case of such modification, alteration, or revocation said instrument shall direct the disposition to be made of the trust fund, or the part of the trust fund affected by such modification, alteration, or revocation, and upon delivery of such instrument to the trustees, or their successors, said instrument shall take effect according to its provisions, and the trustees, or their successors, shall make, execute, and deliver all such documents, and make such conveyances, transfers, and deliveries of property, rights, interests, and securities as may be necessary or proper in order to carry the same into effect, and no one shall have any right, interest, or estate under this agreement, except subject to and in accordance with such modification, alteration, or revocation thereof; provided, however, that no power of revocation in this agreement reserved or contained shall affect the income at any time received or accrued upon the trust fund, or upon
137 the properties, interests or securities originally or at any time comprised therein, or affect any accumulations or investments of such income; but the legal ownership and title of the trustees and the beneficial ownership and title of the beneficiary, or beneficiaries, in and to such income shall be and remain absolute and indefeasible, subject only to such directions as the settlor may give to the trustees under the powers herein reserved or contained, as to the respective proportions of income to be paid over or accumu-

lated, or as to the investment or reinvestment of accumulations or varying the respective shares of the beneficiaries in the income to be paid over or accumulated.

Twelfth. The coporate trustee shall be entitled to receive as compensation for its services in the administration of this trust, a commission of one-half of one per cent (.0½%) per annum upon all incomes received under the trust, and is hereby authorized to deduct such commission from the said income. In case of the termination of the trust by revocation as hereinbefore provided prior to the expiration of five (5) years from the date hereof, the corporate trustee shall be entitled to receive, in addition to the aforesaid commission theretofore received by it, a commission of ten thousand dollars ($10,000.). In case of the termination of the trust otherwise than by revocation, the corporate trustee shall be entitled to no other or further commission than herein first specified. The individual trustee shall be entitled to receive as compensation for his
138 services a commission at the rate of five hundred dollars ($500.) per annum, payable in semi-annual installments on the first day of January and July in each year, while acting as trustee hereunder, and the corporate trustee is hereby authorized to deduct such commission from the said income.

Thirteenth. The trustees by joining in the execution of this instrument signify their acceptance of the trust herein created, and covenant and agree with the settlor that they will faithfully perfrom the duties therof according to the best of their skill, knowledge and ability, but the trustees shall not be responsible for any action taken by them in the administration of the trust if taken in accordance herewith or with any written directions to them by the settlor, or for any mistake in judgment or decrease in value of the trust fund.

Fourteenth. This agreement and the trust created by this agreement shall be performed, executed and administered in the State of New Jersey, and the laws of the State of New Jersey shall govern the validity, interpretation, administration and enforcement thereof. The properties, interests and securities comprising the trust fund, together with the income thereof, shall at all times until the termination of the trust be held, kept and retained by the trustees in the State of New Jersey. Upon the termination of the trust, the trust fund and its accumulations, and the income thereof, shall be conveyed, delivered and paid over in the State of New Jersey to
139 the person or persons who shall then be entitled to take and receive the same as herein provided, or to the duly authorized agent, attorney or representative of such person or persons.

Fifteenth. The individual trustee may at any time resign his trust hereunder by a writing signed by him and delivered to the corporate trustee, accompanied by a proper transfer and release of his title to and interest in the trust fund and properties. The settlor may at any time dispense with an individual trustee in the performance or execution of the trust, or substitute another person for the person

originally named as individual trustee hereunder, by a writing signed in duplicate by the settlor and delivered to the individual trustee and the corporate trustee; and upon delivery of such writing, the trusteeship of the person so originally named shall be rendered vacant. In the event of the death, resignation, disability or substitution of the individual trustee, the trusteeship thereby rendered vacant may be filled by the appointment in writing of the settlor delivered to the corporate trustee, and thereupon the person so designated upon his written acceptance of the appointment duly acknowledged and deposited with the corporate trustee shall become vested with all the rights, powers, duties, and obligations of the individual trustee originally named in this agreement; if, however, the death, resignation, or disability of the individual trustee occur after the demise of the settlor, such vacant trusteeship may be filled by appointment by a court of the State of New Jersey of competent jurisdiction.

140 Sixteenth. The corporate trustee shall have the custody of the trust fund and the accumulations thereon, and may receive, collect, sue and receipt for, and disburse and apply the income of the trust fund, as well as do and perform all ministerial acts and duties involved in the administration of the trust, including the making, signing and indorsing of checks, drafts, bills, notes, and other commercial paper, and the depositing of monies, independently of the individual trustee, and in its own name, without the joint action of the individual trustee in so doing; provided, however, that access to the vault or place of safe deposit wherein the properties and securities comprising the trust fund are kept shall be had, and the depositing therein and withdrawal therefrom of any such properties or securities shall be done, jointly by an officer of the corporate trustee and the individual trustee and in the presence of both; that the assignment, transfer, sale, or exchange of any stocks, bonds or other corporate or other securities shall be executed and effected by the joint action of both trustees and in the names of both; and that all matters connected with the execution of the trust calling for the exercise of judgment and discretion shall likewise require the concurrence and joint action of both trustees. Notwithstanding, however, the death, resignation, or disability of the individual trustee, the settlor may at his option, or the court aforesaid after the death of the settlor may in its discretion, dispense with an individual

141 trustee in the performance and execution of the trust by omitting or failing to appoint such trustee, in which case, as well as during any interval pending such appointment, the corporate trustee shall be clothed with and shall be empowered to exercise all the rights and powers vested in the trustees under this agreement, to the same extent and with the like effects as if the corporate trustee had originally been made the sole trustee hereunder, and all provisions herein relative to the action of the individual trustee hereunder shall be held for nought.

Seventeenth. It is mutually agreed that these presents shall extend to and be obligatory upon the executors, administrators, legal representatives and successors, respectively, of the parties hereto.

Eighteenth. This agreement, made as of the same date as a prior trust agreement of the same import, between the same parties and in the interest of the same beneficiary, is made for the purpose of embodying in one document the said prior agreement, and certain further stipulations affecting the terms of the trust now evidenced by separate supplemental instruments, and for the further purpose of more clearly defining the intent of the Settlor, and shall apply to and govern the said trust and the execution and administration thereof as if the same had been originally created hereby; to which end the said prior trust agreement and supplemental instruments shall be, and hereby are, superseded by this agreement, and shall be and are of no further force and effect; provided, however, that
142 all acts and things hitherto done or performed by any of the parties hereto under and by virtue of the said prior trust agreements and of agreements supplemental thereto are hereby ratified, approved and confirmed, and shall be considered and held as having been done and performed under and pursuant to this agreement. In furtherance hereof, the said prior trust agreement made as of the 28th day of June, 1917, and supplemental instruments have coincidentally with the execution and delivery of this agreement been marked "Superseded and cancelled."

This instrument is made in duplicate, each of which is an original, but both taken together shall be deemed one and the same instrument.

In witness whereof, the settlor has hereunto set his hand and seal, and the corporate trustee has caused these presents to be signed by its president, and its corporate seal to be hereunto affixed and attested by its secretary, and the individual trustee has hereunto set his hand and seal, as of the day and year first above written.

Signed, sealed, and delivered
in the presence of—
W. B. F. VEYSEY.
W. B. F. VEYSEY.

MORRIS GUGGENHEIM. [SEAL.]
CLARENCE L. MYERS. [SEAL.]
COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*

Attest:
J. S. PERKINS, *Secretary.*

143 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 1st day of April, A. D. 1918, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and

delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

J. FISHER ANDERSON,
*Master in Chancery of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 1st day of April, A. D. 1918, before me the subscriber personally appeared Jay S. Perkins, who, being by me duly sworn, doth deposes and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument, that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by J. W. Harden-
144 bergh who was at the date of execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

J. S. PERKINS.

Subscribed and sworn to before me the date aforesaid.

J. FISHER ANDERSON,
*Master in Chancery of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 1st day of April, A. D. 1918, before me the subscriber personally appeared Clarence L. Myers, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did ackowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

J. FISHER ANDERSON,
*Master in Chancery of New Jersey.*

145 *Lucile G. Gimbel trust, Exhibit No. 16*

THIS INSTRUMENT, made and executed in Jersey City, New Jersey, on the 12th day of May, 1920, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," and Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at number 15 Exchange Place, Jersey City, New Jersey, as trustee, and Clarence L. Myers, a resident of Red Bank, county of Monmouth, State of New Jersey, as trustee, hereinafter called the "trustee."

Whereas, by a certain trust agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between the above-named settlor and the above-named trustees, the settlor did create a

trust of and in certain property and for certain purposes as in the said agreement specified, for the benefit of the certain person or persons therein named; and

Whereas, the settlor, pursuant to the power reserved to him in and by the eleventh paragraph of the said trust agreement of the 28th day of June, 1917, desires to modify and amend the said trust agreement and the trust as it now exists thereunder.

Now, therefore, this instrument witnesseth:

That the settlor, by virtue of the power and authority vested
146 in him pursuant to the provisions of the said eleventh paragraph of the said trust agreement of the 28th day of June, 1917, does hereby modify and amend the said trust agreement and the trust existing thereunder by incorporating in the said trust agreement, as an addition to the first paragraph thereof and as a further term or condition of the said trust, the following provision:

"In respect to the accumulated income of the trust fund at any time accrued and received thereon and held by the trustees as an addition to and part of the principal of the trust fund, whether in the shape of money or other funds or in the shape of securities or other property, and either before or after investment or reinvestment, the settlor may at any time and from time to time, by directions in writing signed by him and delivered to the trustees, cause and require such accumulated income, or any part or parts thereof, to be assigned, transferred, conveyed, paid over, surrendered and delivered by the trustees to the beneficiary of the said trust, Lucile G. Gimbel, absolutely and free of all restrictions."

In witness whereof, the settlor has hereunto set his hand and seal, and the corporate trustee has caused these presents to be signed by its president and its corporate seal to be hereunto affixed and attested by its secretary, and the individual trustee has hereunto set
147 his hand and seal, on the day and year first above written.

Signed, sealed, and delivered
in the presence of—
WILLARD C. FISK.

MORRIS GUGGENHEIM. [SEAL.]
CLARENCE L. MYERS. [SEAL.]
COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*

Attest:
J. S. PERKINS, *Secretary.*
[SEAL.]

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 12th day of May, A. D. 1920, before me the subscribed personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed

the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed,
148 and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

WILLARD C. FISK,
*Master in Chancery of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 12th day of May, A. D. 1920, before me the subscriber personally appeared Jay S. Perkins, who, being by me duly sworn, doth deposes and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company that the said seal was so affixed thereto and the said instrument signed and delivered by John W. Hardenbergh, who was at the date of the execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

JAY S. PERKINS.

Subscribed and sworn to before me the date aforesaid.

WILLARD C. FISK,
*Master in Chancery of New Jersey.*

149 STATE OF NEW JERSEY,
County of Hudson, *ss:*

Be it remembered that, on this 12th day of May, A. D. 1920, before me the subscribed personally appeared Clarence L. Myers, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

WILLARD C. FISK,
*Master in Chancery of New Jersey.*

*Lucile G. Gimbel trust, Exhibit No. 17*

Jersey City, N. J., March 2, 1921.

COMMERCIAL TRUST COMPANY OF NEW JERSEY,
*15 Exchange Place, Jersey City, N. J.*

Mr. MORRIS GUGGENHEIM,
*15 Exchange Place, Jersey City, N. J.*

GENTLEMEN: I hereby tender my resignation as individual
150 trustee of the trust for the benefit of Lucile C. Gimbel, existing by virtue of the trust agreement dated as of the 28th day

of June, 1917, between yourselves and the undersigned and of any agreements or instruments amendatory thereof or supplementary thereto; this resignation to take effect immediately upon its acknowledgement by you.

As provided in article fifteenth of the trust agreement of June 28, 1917, I enclose herewith a transfer and release of my title to and interest in the trust fund and properties.

Very truly yours, CLARENCE L. MYERS.

*Lucile G. Gimbel trust, Exhibit No. 18*

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Clarence L. Myers, the person named as individual trustee in a certain trust agreement dated as of the 28th day of June, 1917, between Morris Guggenheim and Commercial Trust Company of New Jersey, corporate trustee, and Clarence L. Myers, of Red Bank, county of Monmouth, State of New Jersey, as individual trustee, creating a certain trust for the benefit of Lucile G. Gimbel, and in certain agreements or instruments amendatory thereof or supplementary thereto, in consideration of one dollar lawful money of the United States to him in hand paid before the sealing and delivery of these
151 presents, the receipt whereof is hereby acknowledged, has sold, assigned, transferred, set over, released, surrendered, and delivered, and by these presents does sell, assign, transfer, set over, release, surrender, and deliver, unto Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, as trustee under the trust agreement aforesaid and the amendments thereof and supplements thereto, all his right, title, and interest in and to the trust fund and properties comprised in the said trust and all his right, title, and interest in, to and under the said trust agreement and the amendments thereof and supplements thereto, to have and to hold unto the said Commercial Trust Company of New Jersey, as trustee, as aforesaid.

In witness whereof, the said Clarence L. Myers has signed, sealed, and delivered these presents in Jersey City, New Jersey, on this 3rd day of March, 1921.

CLARENCE L. MYERS. [SEAL.]

Witness:
WM. V. TOFFEY.

List of securities held by Commercial Trust Company of New Jersey and Clarence L. Myers, trustees under trust agreement of Morris Guggenheim for Lucile G. Gimbel, dated the 28th day of June, 1917, at the close of business March 3rd, 1921:

152 2,500 shares New York and Honduras Rosario Mining Company.
3,025 " Bunker Hill & Sullivan Mining & Concentrating Co.

| | | | |
|---|---|---|---|
| 4,000 | " | | Utah Copper Corporation. |
| 135,300 | " | | Chile Copper Co. |
| $509,500 | par | value | Chile Copper Co. coll. trust 7% gold bonds. |
| 1,290,000 | " | " | Chile Copper Co. coll. trust, series A, 6% bonds. |
| 35,000 | " | " | Kennecott Copper Corporation 10-year gold bonds. |
| 182,000 | " | " | United States of America Victory L. L. 4¾% notes. |
| 45,000 | " | " | American Tel. & Tel. Company 3-year gold notes. |

COMMERCIAL TRUST COMPANY,
OF NEW JERSEY,
By J. S. PERKINS, *V. P.*,
CLARENCE L. MEYERS,
*Trustees under the Trust Agreement of Morris Guggenheim for Lucile G. Gimbel, Dated the 28th day of June, 1917.*

Attest correct:
GEO. LETTERHOUSE.

153 *Lucile G. Gimbel trust, Exhibit No. 19*

JERSEY CITY, N. J., *March 2, 1921.*

Mr. CLARENCE L. MYERS,
*15 Exchange Place, Jersey City, N. J.*

DEAR SIR: Receipt is hereby acknowledged of your letter of March 2nd, 1921, addressed to the undersigned, tendering your resignation as individual trustee of the trust for the benefit of Lucile G. Gimbel, existing by virtue of the trust agreement dated as of the 28th day of June, 1917, between yourself and the undersigned, and of any agreements or instruments amendatory thereof or supplementary thereto. Receipt is also acknowledged of the transfer and release in favor of the Commercial Trust Company of New Jersey of your title to and interest in the trust fund and properties.

Since your resignation was made effective upon its acknowledgment by the undersigned, this letter of acknowledgment will serve as evidence of the fact that your resignation became effective on the date hereof.

Very truly yours,

MORRIS GUGGENHEIM.
COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*

154 *Lucile G. Gimbel trust, Exhibit No. 20*

Murry Guggenheim, 120 Broadway, New York.

JERSEY CITY, N. J., *March 2, 1921.*

COMMERCIAL TRUST COMPANY OF NEW JERSEY,
*15 Exchange Place, Jersey City, N. J.*
Mr. CLARENCE L. MYERS,
*15 Exchange Place, Jersey City, N. J.*

GENTLEMEN: Referring to the trust agreement dated as of the 28th day of June, 1917, between yourself and the undersigned, creating a trust for the benefit of Lucile G. Gimbel, and to the instruments or agreements amendatory thereof or supplementary thereto, and in view of the resignation of Clarence L. Myers as individual trustee of the said trust under the said agreement and the amendments thereof and supplements thereto this day tendered, please be advised that, as authorized by the fifteenth article of the said trust agreement, an individual trustee is hereby dispensed with in the performance and execution of the said trust.

Signed and delivered in duplicate.

Very truly yours,

MORRIS GUGGENHEIM.

155 *Lucile G. Gimbel trust, Exhibit No. 21*

THIS INSTRUMENT, made and executed in Jersey City, New Jersey, on the 3rd day of March, 1921, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," and Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at number 15 Exchange Place, Jersey City, New Jersey, as trustee, hereinafter called the "trustee."

Whereas, by a certain trust agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between the above-named settlor and the said Commercial Trust Company of New Jersey and Clarence L. Myers, trustees, and by an instrument between the same parties, dated the 12th day of May, 1920, supplementary to and amendatory of the said trust agreement, the settlor did create a trust of and in certain property, for certain purposes as in the said agreement and instrument specified, for the benefit of the certain person or persons therein named; and

Whereas, the settlor, pursuant to the power reserved to him in and by the eleventh paragraph of the said trust agreement of the 28th day of June, 1917, desires to modify and alter the terms and provisions of the said trust agreement as amended and the terms and conditions of the said trust so created thereunder.

156 Now, therefore, this instrument witnesseth:

That the settlor, by virtue of the power and authority vested in him pursuant to the provisions of the said eleventh paragraph of

the said trust agreement of the 28th day of June, 1917, does hereby modify and alter the terms and provisions of the said trust agreement and of the said instrument of the 12th day of May, 1920, and the terms and conditions of the trust existing thereunder, as follows:

1. By modifying and altering the terms and provisions of the first article or subdivision of the said trust agreement of the 28 day of June, 1917, so that the same shall read as follows:

"First. In the manner hereinafter specified, to receive, hold, manage, sell, exchange, invest, reinvest, deal with, and dispose of the same and every part thereof, and to collect, recover and receive the rents, issues, interest, income and profits thereof, hereinafter called the 'income' thereof; and to pay such income to the extent of thirty thousand dollars ($30,000) thereof per annum to the daughter of the settlor, Lucile, G. Gimble, in quarterly installments, payable, respectively, on the first day of January, April, July and October in each and every year for and during the natural life of the settlor, and to invest the remainder of all such income (less any amount or
157 amounts thereof which the trustee may be required to deduct and withhold therefrom and to pay under any present or future income tax law or other law, and after deducting therefrom the commissions of the trustee hereinafter provided for and the proper and necessary expenses of administering the trust) in other property or securities, which shall be when acquired added to the property or securities already held by the trustee hereunder and subject to the same terms and conditions of trust as an integral part of the trust fund; and from and after the death of the settlor, to pay all such income thereafter accruing (less the deductions hereinbefore specified) to the said Lucile G. Gimbel for and during her natural life. The settlor may at any time, and from time to time, by directions in writing delivered to the trustee, increase the aggregate amount of payments to be made annually to the said Lucile G. Gimbel above the yearly rate or sum hereinbefore specified, to any extent not exceeding the full amount of the annual net income of the trust fund; and the settlor may likewise at any time, and from time to time, by directions in writing delivered to the trustee, decrease the aggregate amount of the payments to be made annually to the said Lucile G. Gimbel below any amount to which such payments may previously have been increased as herein provided, to any extent down to the amount of such payments first hereinbefore specified."

158 2. By modifying and altering the terms and provisions of the second article or subdivision of the said trust agreement of the 28th day of June, 1917, so that the same shall read as follows:

"Second. Upon the death of the said Lucile G. Gimbel without issue her surviving, but leaving her surviving the granddaughter of the settlor, the niece of the said Lucile G. Gimbel, Natalie Guggenheim, the income of the trust fund shall be invested, reinvested, accumulated and added to the principal of the trust fund until the said

Natalie Guggenheim shall have arrived at the age of twenty-one years, and when she shall have arrived at the age of twenty-one years the entire net income of the trust fund thereafter accruing shall be paid over to the said Natalie Guggenheim for and during her natural life; and upon the death of the said Natalie Guggenheim the said trust fund and all the property, money and securities then comprising the same, together with all income, gains and profits thereof and all accumulations thereon in the hands of the trustee, shall be paid over, surrendered and delivered or otherwise distributed as she, the said Natalie Guggenheim, may have by her last will duly and finally admitted to probate, directed and appointed, or if there be no such will the same shall be paid over, surrendered and delivered to the administrator or administrators of the said Natalie
159 Guggenheim to be by such administrator or administrators disposed of and distributed as the laws of her domicile may prescribe in the case of her intestacy, and upon such payment, surrender and delivery the trustee shall be discharged of all further duties and obligations in the premises. Upon the death of the said Lucile G. Gimbel leaving her surviving a child or children or descendants of any child or children, or upon the death of the said Lucile G. Gimbel without issue her surviving if the death of the said Natalie Guggenheim shall have previously occurred, in either event the said trust fund and all the property, money and securities then comprising the same, together with all income, gains and profits thereof and all accumulations thereon in the hands of the trustee, shall be paid over, surrendered and delivered or otherwise distributed as she, the said Lucile G. Gimbel, may have by her last will duly and finally admitted to probate directed and appointed, or if there be no such will the said trust fund and the whole thereof shall be paid over, surrendered and delivered to he settlor if he shall then be living, or if he shall then not be living to the wife of the settlor, Leonie Guggenheim, if she shall then be living, or if she shall then not be living to the son of the settlor, Edmond A. Guggenheim, if he shall then be living, or if he shall then not be living to the descendants of
160 the said Edmond A. Guggenheim then living, if any, or if there be no such descendants then living the said trust fund and the whole thereof shall be paid over, surrendered and delivered, absolutely and without restriction to Mount Sinai Hospital of the city of New York, now located at number 1 East One Hundred Street, New York City.

"Out of income of the trust fund available for accumulation as hereinbefore provided the trustee shall pay to Clarence L. Myers, formerly the individual trustee named in the said trust agreement of the 28th day of June, 1917, the sum of five hundred dollars ($500) per annum for and during the three calendar years beginning with the first day of July, 1291, and ending with the thirtieth day of June, 1924 payable semi-annually."

3. By modifying and altering the terms and provisions of the fifth article or subdivision of the said trust agreement of the 28th day of June, 1917, so that the same shall read as follows:

"Fifth. Sales, exchanges and substitutions of property or securities comprising the trust fund, and investments and reinvestments for the trust fund, and of income subject to investment or reinvestment, shall be made in accordance with the best judgment and discretion of the trustee after the death of the settlor, and prior thereto if, when and as directed in writing by the settlor so long as she shall live, to whom alone during his lifetime is reserved the
161 right of deciding upon and authorizing the making of any and all such changes in the trust fund caused by sales, exchange and substitutions of property or securities comprising the trust fund and investments and reinvestments of the trust fund and of income subject to investment or reinvestment, and the right of causing such changes to be effectuated; and the trustee shall be fully protected in making any such sales, exchanges, substitutions, investments and reinvestments as shall be directed in writing by the settlor, and shall not be liable or responsible in any way for depreciation or loss incurred by reason of any such sales, exchanges, substitutions, investments or reinvestments so made. No purchaser upon any sale by the trustee shall be bound to see to the application of the purchase money arising therefrom, or to inquire into the authority, validity, expediency or propriety of any such sale. The trustee, after the death of the settlor, is authorized to retain and hold for the purpose of the trust any and all of the stocks, bonds or other securities comprised in the trust fund at the time of the death of the settlor, including such thereof as may be unproductive of income, or as may be, or may be deemed to be, hazardous or speculative investments, and in case of losses or expense arising from the exercise of the authority hereby conferred upon the trustee, it shall not be held liable therefore.
162 Without intending to control the lawful discretion of the trustee, should circumstances arise after the death of the settlor to make it necessary or desirable in its best judgment to alter the investments comprised in the trust fund, the trustee shall nevertheless understand, from the fact that the stocks, bonds and other securities then comprising the trust fund are included therein, that the settlor believed in their intrinsic and permanent value and would request that the investments represented by such stocks, bonds and securities be not changed except for good and sufficient reason. Investments or reinvestments made by the trustee after the death of the settlor shall be made in such securities or properties as trustees are authorized or permitted to invest in by the laws of the State of New Jersey."

4. By modifying and altering the terms and provisions of the eleventh article or subdivision of the said trust agreement of the 28th day of June, 1917, so that the same shall read as follows:

"Eleventh. Anything herein to the contrary notwithstanding, the settlor, from time to time during the continuance of the trust, by

instrument in writing executed and acknowledged in the manner required for a deed of real property, so as to enable it to be recorded in the State of New Jersey, and delivered to the trustee, or its
163 successor, may modify or alter in any way or revoke in whole or in part this agreement and the trust then existing, and the estates and interests in property hereby created and provided for, and in case of such modification, alteration or revocation said instrument shall direct the disposition to be made of the trust fund, or of the part of the trust fund affected by such modification, alteration or revocation, and upon delivery of such instrument to the trustee, or its successor, said instrument shall take effect according to its provisions, and the trustee, or its successor, shall make, execute and deliver all such documents, and make such conveyances, transfers and deliveries of property, rights, interests and securities as may be necessary or proper in order to carry the same into effect, and no one shall have any right, interest or estate under this agreement, except subject to and in accordance with such modification, alteration or revocation thereof; provided, however, that no power of revocation in this agreement reserved or contained shall affect the income at any time received or accrued upon the trust fund, or upon the properties, interests or securities originally or at any time comprised therein, or affect any accumulations or investments of such income; but the legal ownership and title of the trustee and the beneficial ownership and title of the beneficiary, or beneficiaries, in and to such income shall be and remain absolute and
164 indefeasible, subject only to such directions as the settlor may give to the trustee under the powers herein reserved or contained, as to the respective proportions or income to be paid over or accumulated, or as to the investment or reinvestment of accumulations or varying the respective shares of the beneficiaries in the income to be paid over or accumulated; and provided further, that after the expiration of ten (10) years from the 28th day of June, 1917, no power of revocation in this agreement reserved or contained shall be effective to abrogate the trust, or to destroy the principal or corpus of the trust fund, or to withdraw the properties, interests and securities comprising the trust fund from the operation of the trust (otherwise than by way of exchange, substitution or sale for reinvestments), but the legal ownership and title of the trustee and the beneficial ownership and title of the beneficiaries in and to the said principal or corpus of the trust fund and the properties, interests and securities comprising the same shall be and remain absolute and indefeasible, subject only to such directions as the settlor may give to the trustee, and to such modifications or alterations as the settlor may make in the provisions of the trust, under the powers in this agreement reserved or contained, as to the management of the trust fund, the relative interests of the beneficiaries therein, the respective
165 shares of the beneficiaries, their powers with respect to such shares, the time and manner of making distribution, by way

of advancement or otherwise, of principal or income and as to the making of sales, exchanges and substitutions of property in, and investments and reinvestments for the trust fund."

5. By modifying and altering the terms and provisions of the twelfth article or subdivision of the said trust agreement of the 28th day of June, 1917, so that the same shall read as follows:

"Twelfth. The trustee shall be entitled to receive as compensation for its services in administering the trust during the lifetime of the settlor a commission of two thousand dollars ($2,000) per annum, and, after the death of the settlor, a commission of two thousand five hundred dollars ($2,500) per annum; provided, however, that should the income of the trust fund in any year after the death of the settlor exceed the sum of two hundred and fifty thousand dollars ($250,000), the trustee shall be entitled to receive for such year, as additional compensation, a sum equivalent to one-half of one per centum (½ of 1%) of the amount of such income in excess of the said sum of two hundred and fifty thousand dollars ($250,000). In case of the termination of the trust by revocation as hereinbefore provided prior to the expiration of five (5)
166 years from the date hereof, the trustee shall be entitled to receive, in addition to the aforesaid commission theretofore received by it, a commission of ten thousand dollars ($10,000). In case of the termination of the trust otherwise than by revocation, the trustee shall be entitled to no other or further commission than herein first specified."

6. By modifying and altering the terms and provisions of the said trust agreement of the 28th day of June, 1917, so as to eliminate and cancel the fifteenth article or subdivision thereof, which shall hereafter be disregarded and held for naught.

7. By modifying and altering the terms and provisions of the said trust agreement of the 28th day of June, 1917, including the sixteenth article or subdivision thereof, so as to eliminate and cancel all references in said agreement and in said article or subdivision to the individual trustee, and all provisions in the said agreement and in the said article or subdivision relative to the individual trustee, and to the powers and duties of such trustee shall hereafter be held for naught, an individual trustee having heretofore been dispensed with in the performance of the trust. The word "trustees" wherever it appears in the said trust agreement shall hereafter be read in the singular, as "trustee."

8. The terms and provisions of the said first, second, fifth,
167 eleventh, twelfth, fifteenth, and sixteenth articles or subdivisions, as set forth in the said trust agreement of the 28th day of June, 1917, as amended by the said instrument of the 12th day of May, 1920, shall hereafter be disregarded and held for naught, and the terms and provisions of the said trust agreement and of the said first, second, fifth, eleventh, twelfth, and sixteenth articles or subdivisions thereof as hereby modified and altered and as herein

set forth or amended, shall hereafter govern the administration and execution of the trust.

In witness whereof, the settlor has hereunder set his hand and seal, and the trustee has caused these presents to be signed by its president and its corporate seal to be hereunto affixed and attested by its secretary, on the day and year first above written.

Signed, sealed, and delivered
in the presence of—
WM. V. TOFFEY.

MORRIS GUGGENHEIM. [SEAL.]
COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*

Attest:
R. S. CARMICHAEL, *Secretary.*

168 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered, that, on this 3rd day of March, 1921, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] WM. V. TOFFEY,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered, that, on this 3rd day of March, 1921, before me the subscriber personally appeared Robert S. Carmichael, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by John W. Hardenbergh, who was at the date of execution thereof the president of the
169 said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

R. S. CARMICHAEL.

Subscribed and sworn to before me the date aforesaid.

[SEAL.] WM. V. TOFFEY,
*Notary Public of New Jersey.*

*Lucile G. Gimbel trust, Exhibit No. 22*

INSTRUMENT, made and executed in Jersey City, New Jersey, on the 5th day of May, 1921, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," the Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at number 15 Exchange Place, Jersey City, New Jersey, as trustee, hereinafter called the "trustee," and Louis F. Rothschild and Clarence L. Myers, both of the city, county, and State of New York.

Whereas by a certain trust agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between
170 the above-named settlor and the said Commercial Trust Company of New Jersey and Clarence L. Myers, trustees, and by an instrument between the same parties, dated the 12th day of May, 1920, supplementary to and amendatory of the said trust agreement, and by a further instrument between the settlor and the Commercial Trust Company of New Jersey, dated the 3rd day of March, 1921, the settlor did create a trust (known as the Lucile G. Gimbel trust) of and in certain property, for certain purposes as in the said agreement and instruments specified, for the benefit of the certain person or persons therein named; and

Whereas by the terms of the said agreement and instruments (a) the right of deciding upon and authorizing the making of any and all changes in the trust fund caused by sales, exchanges, and substitutions of property or securities comprising the trust fund and investments and reinvestments of the trust fund and of income subject to investment or reinvestment and the right of causing such changes to be effectuated is reserved to the settlor to be exercised by him by directions in writing to the trustee, and (b) the authority and power of the trustee to do and perform the several acts and things enumerated in the seventh article or subdivision of the said trust agreement of the 28th day of June, 1917 (i. e., to vote in person or by proxy upon all stocks; to exchange securities; to consent to the reorganization, consolidation, or merger of any corporation
171 or to the sale or lease of its property; to pay all assessments, subscriptions, or other sums of money necessary to the protection of the trustee as holder of any stocks or other securities; to exercise any option contained in any stocks, bonds, or other securities for the conversion of the same; and to take advantage of any rights to subscribe for additional stocks, bonds, or other securities and to make any and all necessary payments therefor, and the like), are subject in each and every instance to the written approval and direction of the settlor; and

Whereas, the settlor desires to relinquish and divest himself of the said rights and powers so reserved to or retained by him of directing

or controlling the administration of the trust and management of the trust fund and to confer the said rights and powers upon and to vest the same in the said Louis F. Rothschild, in the first instance, and (contingently) upon and in the said Clarence L. Myers, to the end that the said Louis F. Rothschild (and contingently the said Clarence L. Myers) shall be substituted for the settlor as the person by whom the said rights and powers may be exercised; the intention being that, whereas it has been the purpose of the settlor heretofore that the trust estate should have the benefit of the special knowledge, experience, judgment, and discretion of the settlor in respect of the several matters and things to which the said rights and powers relate, it is now the purpose of the settlor that
172 hereafter the trust estate shall have the benefit of the special knowledge, experience, judgment and discretion of the said Louis F. Rothschild (or contingently the said Clarence L. Myers) in respect to the said matters and things;

Now, therefore, this instrument witnesseth:

1. That, in consideration of the premises, the settlor has remised, released, relinquished, granted, bargained, sold, assigned, transferred and set over, and by these presents does remise, release, relinquish, grant, bargain, sell, assign, transfer and set over, unto the said Louis F. Rothschild and the said Clarence L. Myers, severally and respectively but not jointly, all the rights and powers reserved to or retained by him under and by virtue of the fifth and seventh articles or sub-divisions of the said trust agreement of the 28th day of June, 1917, of directing or controlling the administration of the said trust and the management of the trust fund and the action of the said trustee in respect to such administration and management, as set forth in the said articles or sub-divisions as so amended; to have and to hold unto and to the exclusive use of the said Louis F. Rothschild and the said Clarence L. Myers, severally and respectively, for and during the life of the settlor; provided, however, that this transfer and conveyance of the said rights and powers to the said Clarence L. Myers shall take effect, if at all, only upon the death of the said Louis F. Rothschild prior to the death of the settlor, or
173 upon his written refusal to exercise the said rights and powers delivered to the said trustee prior to such death, and not otherwise. The said Louis F. Rothschild and the said Clarence L. Myers by becoming parties to this instrument each for himself respectively accepts this transfer and conveyance of the said rights and powers and agrees and undertakes to use his best judgment and discretion in the exercise of the said rights and powers. The said Commercial Trust Company of New Jersey by becoming a party to this instrument consents to the said transfer and conveyance of the said rights and powers to, and their assumption and exercise by, the said Louis F. Rothschild and the said Clarence L. Myers as in this instrument provided.

2. The right, title and interest of the trustee, the Commercial Trust Company of New Jersey, in the trust fund and in the properties, interests and securities comprising the same, and in the management of the trust fund, arising and existing under and by virtue of the said trust agreement of the 28th day of June, 1917, as supplemented, modified or amended by the said instruments of the 12th day of May, 1920, and the 3rd day of March, 1921, are hereby in all respects ratified and confirmed, subject to the terms and conditions of the said trust and subject to the exercise during the life of the settlor by the said Louis F. Rothschild or the said Clarence L. Myers of the rights and powers by this instrument conferred upon them severally and respectively.

174 3. As to any and all matters in respect to which the said rights and powers hereby transferred and conveyed may be exercised, the trustee may request in writing from the said Louis F. Rothschild (or the said Clarence L. Myers) written directions as to the action to be taken, and if the said Louis F. Rothschild (or the said Clarence L. Myers) shall refuse or neglect or be unable for any reason to give such written directions for a period of thirty days after such request has been mailed to his last known place of residence, the trustee is authorized and empowered to take such action in the premises as it may deem proper and desirable under the circumstances. The trustee shall be fully protected in taking any action in respect of which the said rights and powers may be exercised which it may have received written directions from the said Louis F. Rothschild (or the said Clarence L. Myers) to take, as fully to all intents and purposes as it would have been protected in like case had such written directions been given by the settlor under the terms and conditions of the trust as they have heretofore existed.

4. Nothing in this instrument contained shall be deemed to affect or limit the power of the settlor to modify, alter or revoke the said trust and trust agreement, as said power is reserved to the settlor in the said agreement of the 28th day of June, 1917, and the said instruments supplementary thereto and amendatory thereof.

175 Nor shall anything in this instrument contained, or contained in the said agreement of the 28th day of June, 1917, or the said instruments, supplementary thereto or amendatory thereof, be deemed to affect the power of the settlor, by directions in writing given to the trustee, to alter, define and prescribe the relative interests of the beneficiaries in the trust fund, or the income thereof, their respective shares in the same, their respective powers with respect to such shares, and the time and manner of making distribution to the beneficiaries, or any of them, by way of advancement or otherwise, of principal or income, or both, of the trust fund; which power of the settlor is hereby expressly reaffirmed and reserved.

5. The terms, conditions and provision of the said agreement of the 28th day of June, 1917, as supplemented, amended or modified by the said instruments of the 12th day of May, 1920, and the 3rd

day of March, 1921, in so far as they are inconsistent with the provisions of this instrument, shall be deemed to be hereby altered and modified, in all other respects the said terms, conditions and provisions shall remain in full force and effect.

In witness whereof, the settlor has hereunto set his name and seal and the trustee has caused these presents to be signed by its president and its corporate seal to be hereunto affixed and attested by its secretary, and the said Louis F. Rothschild and the said
176 Clarence L. Myers have hereunto set their hands and seals on the day and year first above written.

Signed, sealed and delivered
in the presence of—

MORRIS GUGGENHEIM. [SEAL.]

WM. V. TOFFEY.

COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By J. W. HARDENBERGH, *President.*

Attest:
[SEAL.] R. S. CARMICHAEL, *Secretary.*

LOUIS F. ROTHSCHILD. [SEAL.]
CLARENCE L. MYERS. [SEAL.]

WM. V. TOFFEY,
WM. V. TOFFEY.

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 5th day of May, 1921, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him
177 the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] WM. V. TOFFEY,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 5th day of May, 1921, before me the subscriber personally appeared Robert S. Carmichael, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by J. W. Hardenbergh, who was at the date of execution thereof the president of the said company, in the presence of the said deponent as the voluntary act

and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

ROBERT S. CARMICHAEL.

Subscribed and sworn to before me the date aforesaid.

[SEAL.] WM. V. TOFFEY,
*Notary Public of New Jersey.*

178 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 6th day of May, 1921, before me the subscriber personally appeared Louis F. Rothschild, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] WM. V. TOFFEY,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 6th day of May, 1921, before me the subscriber personally appeared Clarence L. Myers, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] WM. V. TOFFEY,
*Notary Public of New Jersey.*

179 *Lucile G. Gimbel trust, Exhibit No. 23*

GUGGENHEIM,
*New York.*

Morris Guggenheim Commercial Trust Company of New Jersey & whom else soever it may concern, this is to certify that the undersigned desires to relinquish the rights & powers in respect to the Lucile G. Gimbel trust heretofore conferred upon him by that certain instrument dated May fifth nineteen twenty-one between Morris Guggenheim, Commercial Trust Company of New Jersey, Louis Rothschild & Clarence L. Myers & to be relieved of all further duties or responsibilities in the premises & he hereby consents to the vesting of such rights & powers in any other person or persons & accordingly requests that appropriate action be taken to that end stop Am mailing certificate to foregoing effect over my signature duly acknowledged.

CLARENCE L. MYERS.

JUNE 23RD, 1925.

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA
*At the City of Paris, in the Republic of France, ss:*

I, Damon C. Woods, consul of the United States of America at the city of Paris, in the Republic of France, duly commissioned and qualified do certify, that, on this 23d day of June, 1925, before me personally appeared in said Paris, France, Clarence L. Myers,
180 to me personally known, and known to me to be the individual described in, whose name is subscribed to and who executed the foregoing instrument, and being by me informed of the contents of said instrument he duly acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

DAMON C. WOODS,
*Consul of the United States of America*
*at Paris, France.*

American consulate general (Jun. 2, 1925), Paris, France.
American Consular Service. $2. Fee stamp.

181 *Lucile G. Gimbel trust, Exhibit No. 24*

NEW YORK, *June 26th, 1925.*

*To Mr. Morris Guggenheim, Commercial Trust Company of New Jersey, and whom else soever it may concern:*

This is to certify, that the undersigned desires to relinquish the rights and powers in respect to the Lucille G. Gimbel trust heretofore conferred upon him by that certain instrument dated May 5, 1921, between Morris Guggenheim, Commercial Trust Company of New Jersey, Louis F. Rothschild and Clarence L. Myers, and to be relieved of all further duties or responsibilities in the premises; and he hereby consents to the vesting of such rights and powers in any other person or persons, and accordingly requests that appropriate action be taken to that end.

LOUIS F. ROTHSCHILD.

STATE OF NEW YORK,
*County of New York, ss:*

Be it remembered, that on this 26th day of June, A. D. 1925, before me, the subscriber, personally appeared Louis F. Rothschild, who, I am satisfied, is the person named in and who executed the foregoing instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for the purpose therein expressed.

[SEAL] CHARLES F. KOGEL,
*Notary Public, New York County.*

N. Y. Co. clerk's No. 187, reg. No. 7080.
Term expires March 30, 1927.

182 *Lucile G. Gimbel trust, Exhibit No. 25*

INSTRUMENT made and executed in Jersey City, New Jersey, on the 13th day of July, 1925, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at No. 15 Exchange Place, Jersey City, New Jersey, as trustee, hereinafter called the "trustee," and S. R. Guggenheim, Simon Guggenheim and Albert E. Thiele, all of the city, county, and State of New York.

Whereas, by a certain agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917, between the above-named settlor and said Commercial Trust Company of New Jersey and Clarence L. Myers, trustees, and by an instrument between the same parties dated the 12th day of May, 1920, and by a further instrument between the settlor and said Commercial Trust Company of New Jersey dated the 3rd day of March, 1921, and by a further instrument between the above-named settlor, the said Commercial Trust Company of New Jersey, Louis F. Rothschild and the said Clarence L. Myers, dated the 5th day of May, 1921, the settlor did create a trust (known as the "Lucile G. Gimbel trust") of and in certain property, for certain purposes as in said agreement and instruments specified, for the benefit of the certain person or persons therein named; and

183 Whereas, by the terms of the said trust agreements and instruments certain rights and powers of directing or controlling the administration of the trust and the management of the trust fund were originally reserved to or retained by the settlor and were later transferred to and assumed by the said Louis F. Rothschild and Clarence L. Myers, who now desire to be relieved of their several duties and responsibilities in the premises and who have requested that they be so relieved; and

Whereas, the said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele have consented to assume the said rights and powers and to act in the place and stead of the said Louis F. Rothschild and Clarence L. Myers in the premises;

Now, therefore, this instrument witnesseth:

That the settlor, by virtue of the power and authority vested in him pursuant to the provisions of the eleventh paragraph of the said trust agreement of the 28th day of June, 1917, as amended by the above-mentioned instruments, does hereby modify and alter the said trust agreements and instruments and the trust existing thereunder, as follows:

1. By striking out of the said trust agreement and instruments the provisions thereof whereby the rights and powers of directing

or controlling the administration of the said trust and the
184 management of the trust fund were originally reserved to and retained by the settlor during his lifetime and were subsequently transferred to and vested in the said Louis F. Rothschild and Clarence L. Myers, and by vesting the said rights and powers in the said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, severally and respectively. The said trust agreement and instruments, therefore, shall hereafter be deemed and held to confer upon and vest in the said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, severally and respectively, during the life of the settlor, the rights and powers aforesaid to the same extent and with like effect as if the said trust agreement and instruments had originally so provided. The rights and powers herein referred to are those originally reserved to or retained by the settlor under and by virtue of the fifth and seventh articles or subdivisions of the said trust agreement of the 28th day of June, 1917, as heretofore amended, being the same certain rights and powers described in the instrument aforesaid between the settlor, the said Commercial Trust Company of New Jersey, Louis F. Rothschild, and Clarence L. Myers, dated the 5th day of May, 1921, and consisting of rights and powers of directing or controlling the administration of the said trust and the management of the trust fund and the action of the trustees in respect to such administration and management as set forth in the said articles or subdivisions as amended. The said rights and powers may be exercised singly and independently
185 by any one of the persons in whom they are hereby vested, or by any two of said persons jointly, or by all three of said persons jointly. The trustee shall be equally protected in acting in the premises whether the said rights and powers are exercised by one or more of the said persons. Should it ever transpire that directions given by one of said persons are in conflict with directions on the same subject or in the same matter given by another of said persons, the directions on such subject or in such matter in which any two of said persons concur shall prevail and be followed, provided three of said persons are available, but if only two of said persons are available, or if the trustee is given directions by two of said persons only, then in the event of such conflict, the trustee shall take no action in the premises, unless some action in the judgment of the trustee is necessary or desirable for the preservation or due execution of the trust, and if so necessary or desirable the trustee shall have authority to act in accordance with its best judgment and discretion, such conflicting directions notwithstanding. The said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, by becoming parties to this instrument, each for himself respectively accepts the said rights and powers and agrees and undertakes to use his best

judgment and discretion in the exercise of the same. The said Commercial Trust Company of New Jersey, by becoming a party to this instrument, consents to the assumption of the said rights and powers and their exercise by the said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele as in this instrument provided.

186 2. The right, title, and interest of the trustee, the Commercial Trust Company of New Jersey, in the trust fund and in the properties, interests, and securities comprising the same and in the management of the trust fund arising and existing under and by virtue of the said trust agreement of the 28th day of June, 1917, as amended, are hereby in all respects ratified and confirmed, subject to the terms and conditions of the said trust and subject to the exercise by the said S. R. Guggenheim, and/or the said Simon Guggenheim, and/or the said Albert E. Thiele of the rights and powers by this instrument conferred upon them severally and respectively.

3. As to any and all matters in respect to which the said rights and powers hereby transferred and conveyed may be exercised the trustee may request in writing from the said S. R. Guggenheim, the said Simon Guggenheim, and the said Albert E. Thiele, or the survivor or survivors of them, by letter addressed to their last known place of residence, written directions as to the action to be taken, and if within a period of thirty (30) days after such request has been mailed the trustee shall not receive such written directions from any one or more of the said persons so addressed, the trustee is authorized and empowered to take such action in the premises as it may deem proper and desirable under the circumstances. The trustee shall be fully protected in taking any action, in respect of which the said rights and powers may be exercised, which it

187 may have received written directions from the said S. R. Guggenheim, or the said Simon Guggenheim, or the said Albert E. Thiele, to take, as fully to all intents and purposes as it would have been protected in like case had such written directions been given by the settlor under the terms and conditions of the trust as they have heretofore existed. The said S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele, jointly and severally, shall not be or become liable or responsible to any person for any act or omission in respect to the rights and powers herein referred to, or for any other cause, matter, or thing arising hereunder, save only in the event of wilful fraud or breach of trust.

In witness whereof, the settlor has hereunto set his hand and seal and the trustee has caused these presents to be signed by its president

and its corporate seal to be hereunto affixed and attested by its secretary on the day and year first above written.

MORRIS GUGGENHEIM. [L. S.]

Signed, sealed, and delivered
in the presence of—
J. FISCHER ANDERSON.

COMMERCIAL TRUST COMPANY
OF NEW JERSEY,
By WM. J. FIELD, *President.*

188 Attest:
WM. V. TOFFEY,
*Secretary.*

[SEAL.]

Witness:
J. FISHER ANDERSON.

S. R. GUGGENHEIM. [L. S.]
SIMON GUGGENHEIM. [L. S.]
ALBERT E. THIELE. [L. S.]

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personnally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.]

EBEN C. HASLETT,
*Notary Public of New Jersey.*

189 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personally appeared William V. Toffey, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by William J. Field, who was at that date of execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of thet said company, and that said deponent thereupon signed the same as subscribing witness.

WM. V. TOFFEY.

Subscribed and sworn to before me the date aforesaid.

[SEAL.]

EBEN C. HASLETT,
*Notary Public of New Jersey.*

190 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personally appeared S. R. Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] EBEN C. HASLETT,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personally appeared Simon Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] EBEN C. HASLETT,
*Notary Public of New Jersey.*

191 STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, 1925, before me the subscriber personally appeared Albert E. Thiele, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.] EBEN C. HASLETT,
*Notary Public of New Jersey.*

*Lucile G. Gimbel trust, Exhibit No. 26*

INSTRUMENT made and executed in Jersey City, New Jersey, on the 13th day of July, 1925, by Morris Guggenheim, a resident of the city, county, and State of New York, hereinafter called the "settlor," and Commercial Trust Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, having an office for the transaction of business at No. 15 Exchange Place, Jersey City, New Jersey, as trustee, hereinafter called the "trustee."

Whereas, by a certain trust agreement made and executed in Jersey City, New Jersey, as of the 28th day of June, 1917,
192 between the above-named settlor and said Commercial Trust Company of New Jersey and Clarence L. Myers, trustees, and

by an instrument between the same parties dated the 12th day of May, 1920, and by a further instrument between the settlor and said Commercial Trust Company of New Jersey, dated the 3rd day of March, 1921, and by a further instrument between the above-named settlor, the said Commercial Trust Company of New Jersey, Louis F. Rothschild and the said Clarence L. Myers, dated the 5th day of May, 1921, and by a further instrument between the above-named settlor, the said Commercial Trust Company of New Jersey, S. R. Guggenheim, Simon Guggenheim and Albert E. Thiele, dated the 13th day of July, 1925, the settlor did create a trust (known as the "Lucile G. Gimbel trust") of and in certain property, for certain purposes as in said agreement and instruments specified, for the benefit of the certain person or persons therein named; and

Whereas, the settlor in the first, second, and eleventh paragraphs of said trust agreement of the 28th day of June, 1917, as amended by the instruments above referred to, reserved certain powers including powers to control the distribution of the income of the trust and to modify or alter or revoke said trust and now desires to relinquish and terminate all such powers.

Now, therefore, this agreement witnesseth:

That the settlor, by virtue of the power and authority
193 vested in him pursuant to the provisions of the said eleventh paragraph of the said trust agreement of the 28th day of June, 1917, as amended by the above-mentioned instruments, does hereby modify and alter the said trust agreement and instruments and the trust existing thereunder as follows:

1. By modifying and altering the terms and provisions of the first article or subdivision of the said trust agreement of the 28th day of June, 1917, as amended by the instruments of May 12, 1920, and of March 3, 1921; by eliminating therefrom and cancelling the sentence in the instrument of May 12, 1920, reading as follows:

"In respect to the accumulated income of the trust fund at any time accrued and received thereon and held by the trustees as an addition to and part of the principal of the trust fund, whether in the shape of money or other funds or in the shape of securities or other property, and either before or after investment or reinvestment, the settlor may at any time and from time to time, by directions in writing signed by him and delivered to the trustees, cause and require such accumulated income, or any part or parts thereof, to be assigner, transferred, conveyed, paid over, surrendered, and delivered by the trustees to the beneficiary of the said trust, Lucile G. Gimbel, absolutely and free of all restrictions."

and by eliminating therefrom and cancelling the sentences in the instrument of March 3, 1921, reading as follows:

194 "The settlor may at any time, and from time to time by directions in writing delivered to the trustee, increase the aggregate amount of payments to be made annually to the said Lucile G. Gimbel, above the yearly rate or sum hereinbefore specified, to

any extent not exceeding the full amount of the annual net income of the trust fund; and the settlor may likewise at any time, and from time to time by directions in writing delivered to the trustee, decrease the aggregate amount of the payments to be made annually to the said Lucile G. Gimbel below any amount to which such payments may previously have been increased as herein provided, to any extent down to the amount of such payments first hereinbefore specified."

2. By modifying and altering the terms and provisions of the said trust agreement of the 28th day of June, 1917, as amended by the instrument of March 3, 1921, by eliminating therefrom and cancelling the eleventh article or subdivision thereof.

3. The rights and powers in the trust fund and in the properties, interests, and securities comprising the same and in the management of the trust fund vested in S. R. Guggenheim, Simon Guggenheim, and Albert E. Thiele by the instrument executed on the 13th day of July, 1925, are hereby in all respects ratified and confirmed, subject to the terms and conditions of the said trust agreement and the instruments modifying and amending the same.

195 In witness whereof, the settlor has hereunto set his hand and seal and the trustee has caused these presents to be signed by its president and its corporate seal to be hereunto affixed and attested by its secretary on the day and year first above written.

MORRIS GUGGENHEIM, [L.S.]

Signed, sealed and delivered
in the presence of—
J. FISHER ANDERSON.

COMMERCIAL TRUST CO.
OF NEW JERSEY,
By WM. J. FIELD, *President.*

Attest:

WM. V. TOFFEY, *Secretary.*

[SEAL.]

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that on this 13th day of July, A. D. 1925, before me the subscriber personally appeared Morris Guggenheim, who, I am satisfied, is one of the persons named in and who executed the foregoing instrument and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed,
196 and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

[SEAL.]

EBEN C. HASLETT,
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,
*County of Hudson, ss:*

Be it remembered that, on this 13th day of July, A. D. 1925, before me the subscriber personally appeared William V. Toffey, whom, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Commercial Trust Company of New Jersey, one of the parties named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the said seal was so affixed thereto and the said instrument signed and delivered by William J. Field who was at the date of execution thereof the president of the said company, in the presence of the said deponent as the voluntary act and deed of the said company, and that said deponent thereupon signed the same as subscribing witness.

WM. V. TOFFEY.

Subscribed and sworn to before me, the date aforesaid.

[SEAL.]

EBEN C. HASLETT,
*Notary Public of New Jersey.*

197

24 B. T. A. ——

Before United States Board of Tax Appeals

Docket No. 43698

MURRY GUGGENHEIM, PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Petitioner created revocable trusts in 1917; in 1925 he relinquished his powers of revocation. Held, that the relinquishment of the powers constituted gifts within the meaning of the gift-tax provisions of the revenue act of 1924, and amendments thereto by the revenue act of 1926.

George E. Cleary, Esq., for the petitioner.
Frank T. Horner, Esq., for the respondent.

*Opinion*

Promulgated December 18, 1931

ARUNDELL: In 1925 the petitioner relinquished his power of revocation of two trusts established in 1917. This act is held by respondent to constitute a gift with in the meaning of the gift-tax
198 provisions of the revenue act of 1924, and he has asserted a deficiency in gift tax in the amount of $2,465,681.20.

A lengthy stipulation of facts was filed which is incorporated herein by reference as our findings of fact. A brief summary of

the facts will suffice for the purposes of understanding and deciding the case.

The petitioner, at all times material hereto, has resided in New York, New York, and thus has been a resident of the United States.

On June 28, 1917, he established two trusts in New Jersey; one for the benefit of his only son, Edmond, and the other for the benefit of his only daughter, Lucile G. Gimbel. An individual and a trust company were the original trustees. The trusts were to continue for ten years unless sooner terminated. A substantial amount was to be paid annually to the beneficiary of each trust and at the end of the ten-year period the principal of each trust was to be paid to the beneficiary, free of all restrictions.

There were provisions for the children of a beneficiary in case the beneficiary died within the ten-year period, and in the event of the death of a beneficiary without surviving children, then the petitioner was to receive the principal and accumulations.

The petitioner retained the right to alter or revoke each trust except as to income received or accrued, and to direct the making of all changes in the securities included in the trust property. Subject to the petitioner's approval, the trustees were authorized to do all things necessary in connection with the trust property.

199 The trustees were given the custody of the trust funds and all securities were listed in their names or in the names of their nominees.

Various changes in the trust agreements were made from time to time. For example, in 1921 the petitioner gave to two individuals the power, formerly reserved to himself, of directing and approving the management of the trusts.

On July 13, 1925, the final change in the trusts was made, whereby the petitioner relinquished his power to alter, modify, or revoke the trusts.

The corporate trustee continued throughout the period, but there were changes in the individual trustees. The petitioner was never a trustee.

The petitioner delivered to the trustees the securities constituting the corpus of the trust on June 28, 1917, and the trustees have held all securities of the trust since that date. The trustees have collected all income and profits of the trust and have distributed a substantial part thereof to the two beneficiaries, as provided by the agreements. The petitioner has never received any income of the trusts nor had any of such income expended for his benefit. He substituted some securities for others in 1918 for the last time. As securities were delivered by the petitioner to the trustees, such items were eliminated from his accounts. He never used the trusts for personal loans or for personal credit in any way. The value of his separate property has at all times greatly exceeded the value of the trust property.

200 After May 5, 1921, he never exercised any rights of management or control over the trust property.

The corporate trustee was a regular trust company doing other business. The petitioner was not interested in it financially.

The petitioner, his wife, and their two children were all living and of age during the period 1917 to 1925, inclusive.

The fair market value on July 13, 1925, of the securities constituting the corpus of these two trusts was $13,110,463.44, including $116,548.72 representing accrued interest not received and dividends declared but not received. The respondent agrees to eliminate the latter amount from the amount subject to gift tax.

The respondent has asserted the tax under section 319 of the revenue act of 1924, which, as far as material here, provides for the imposition of tax:

"For the calendar year 1924 and the calendar year 1925 * * * upon the *transfer* by a resident *by gift* during such calendar year of any property wherever situated, whether made directly or indirectly * * *." (Italics supplied.)

This statute, as applied to gifts made after its enactment, has been held valid in Bromley v. McCaughn (280 U. S. 124), but invalid as to gifts made prior to June 2, 1924. (Untermeyer v. Anderson, 276 U. S. 440.)

The question here is whether the value of the corpus of the
201 two trusts may be used as the measure of the gift tax asserted on the ground that the "transfer * * * by gift" occurred in 1925 when the settlor relinquished his reserved power to alter, amend, or revoke the trusts which were created in 1917, prior to the enactment of the statute imposing the gift tax. We think it must be conceded that the term "gift" as used in the statute merely designates the transfers selected for tax, i. e., only such transfers as are donative in character have been selected. The term designates the character of the transfer rather than the medium used in effecting it. The parties assume that "transfer by gift" as used in the statute includes all trusts created after the passage of the act, and there can be no doubt of this if the statute is not to be completely nullified by so ready a means of evasion. Thus the tax is imposed upon transfers made "directly or indirectly." The fact that section 319 is broad enough to include the creation of a trust, donative in character, also finds support in subdivisions (a) (2) and (b) (1) of section 321, which allow certain deductions in computing the amount of the gifts subject to the tax imposed by section 319. Both of these subdivisions mention and allow the deduction of gifts made "to or for the use of" various corporations for political or charitable purposes and gifts made "to a trustee or trustees" for similar purposes. But counsel for the petitioner suggests that every essential thing was done in 1917 when the trusts were created. The property was then transferred to a corporate trustee and provision was made that all
202 or some part of the income should go to petitioner's children, merely the right being reserved to alter, amend or revoke the trusts, and it is said that the surrender in 1925 of this reserved right surely can not constitute a transfer within the meaning of the gift tax

statute. But this reserved right which was relinquished in 1925 was the absolute right to control the corpus and the income of the two trusts. At a word from petitioner he was reinvested with the full and complete ownership of the corpus and the income and earnings therefrom on and after the date he might take such action. The rights of the children were complete only as far as income paid and accrued prior to the time petitioner exercised his reserved right to alter, amend, or revoke the trusts. This reserved power may be as petitioner says, the mere right to revoke, but it is the essence of ownership and control. Prior to 1925, when petitioner relinquished the right of revocation, the property was his, not his children's, and he alone could have withdrawn every right they had without legal redress on their part. That a gift by a deed of trust, in which the right of revocation is reserved to the grantor, does not become effective until the termination of the right, is held in numerous decided cases. (See In re Hanna's Estate, 195 N. Y. S. 749; In re Schmidlapp's Estate, 196 N. Y. S. 108, citing Lines Estate, 155 Pa. 378, 26 Atl. 728; Matter of Bullen, 143 Wis. 512; 128 N. W. 109; Blodgett v. Union & New Haven Trust Co., 97 Conn. 405, 116 Atl. 909; Crocker v. Shaw, 174 Mass. 266, 54 N. E. 549.)

203 This tax, like the estate tax, is on the "transfer" of property. In Chase National Bank v. United States (278 U. S. 327), involving insurance policies, it was held that the transfer was uncompleted until the insured's right to change the beneficiaries was terminated.

The court said:

"Such an outstanding power residing exclusively in a donor to recall a gift after it is made is a limitation on the gift which made it incomplete as to the donor as well as to the donee, and we think that the termination of such a power at death may also be the appropriate subject of a tax upon transfers."

The quoted language is particularly significant when it is recalled that the revenue act of 1921 under which the Chase National Bank was decided does not in terms purport to tax transfers or trusts in which the donor retains the power of alteration as do the later revenue acts. (See section 303 (d), revenue acts of 1924 and 1926.) And the same reasoning was applied in Reinecke v. Northern Trust Co. (278 U. S. 339), in holding that the estate tax applied to the revocable trusts involved, the court saying:

"* * * a transfer made subject to a power of revocation in the transferor, terminable at his death, is not complete until his death."

In Means v. United States (— Ct. Cls. —; 39 Fed. (2d)

204 748; certiorari denied) the Court of Claims had facts on all fours with the present case and sustained the imposition of the tax, citing as authority Saltonstall v. Saltonstall (276 U. S. 260), Reinecke v. Northern Trust Co., and Chase National Bank v. United States, supra. In its opinion the Court of Claims said that the

Supreme Court in the cases relied on determined the precise question of the effective date "of the transfer of property where the donor in trust instruments had reserved to himself the unrestricted rights of revocation." The petitioner contends that the Court of Claims misapprehended the scope of the Supreme Court decisions. It is argued that the cases cited are not controlling as the Supreme Court was considering them solely from the standpoint of the constitutional power of Congress to tax as transfers the termination of reserved powers to alter the instruments there involved. It is true that in the cited cases constitutional questions were presented to the court. But in each case the decision turned upon the question of whether the termination of a power after the enactment of the taxing act constituted a transfer within the meaning of the act.

This is distinctly brought out in the Northern Trust Co. case, in which the settlor of two revocable trusts created in 1903 and 1910 died in 1922, while the revenue act of 1921 was in effect. At the time this case was under consideration Nichols v. Coolidge (274 U. S. 531) had already held that the 1918 act was invalid in so far as it attempted to tax "transfers completed before any such
205 statute was enacted," and it was contended that the two trusts came within that rule. But the court held otherwise on the ground that the reserved power in the settlor alone prevented the transfers from being complete until such power was terminated. The opinion reads in part:

"But in No. 77, Chase National Bank v. United States (278 U. S. 327; 49 S. Ct. 126, 73 L. Ed. ——), decided this day, the decision is rested on the ground, earlier suggested with respect to the fourteenth amendment in Saltonstall v. Saltonstall (276 U. S. 260; 48 S. Ct. 225; 72 L. Ed. 565), that a transfer made subject to a power of revocation in the transferor, terminable at his death, is not complete until his death. Hence section 402, as applied to the present transfers, is not retroactive, since his death follows the passage of the statute. For that reason, stated more at length in our opinion in Chase National Bank v. United States, supra, we hold that the tax was rightly imposed on the transfers of the corpus of the two trusts * * *."

In the Chase National Bank case the court states the question before it in this way:

"The precise question presented is whether the termination at death of that power [to change the beneficiary] and the consequent passing to the designated beneficiaries of all the rights under the
206 policies freed of the possibility of its exercise may be the legitimate subject of a transfer tax, as is true of the termination by death of any of the other legal incidents of property through which its use or economic enjoyment may be controlled."

In deciding the question the court held in part:

"*A power in the decedent* to surrender and cancel the policies, to pledge them as security for loans and the power to dispose of them

and their proceeds for his own benefit during his life * * * is by no means the least substantial of the legal incidents of ownership, *and its termination at his death*, so as to free the beneficiaries of the policy from the possibility of its exercise *would seem to be no less a transfer* within the reach of the taxing power *than a transfer effected in other ways through death.*" (Italics supplied.)

This case is strikingly parallel to the Northern Trust Co. case, in so far as the so-called two trusts were involved. In that case the decedent had created two trusts, reserving to himself alone the power of revocation, and died in 1922 without having exercised the powers. The estate tax statute imposed a tax "upon the transfer of the net estate" and provided for the inclusion in the estate of all property

"to the extent of any interest therein of which the decedent
207 has at any time made a transfer or with respect to which he has at any time created a trust * * * intended to take effect in possession or enjoyment at or after his death * * *." In the instant case the taxpayer created trusts in 1917 wherein he reserved to himself alone the power to alter, amend, or revoke, and terminated that power in 1925 by relinquishing it. The applicable statute here taxes "the transfer * * * by gift * * * of any property * * * whether made directly or indirectly * * *." If in the one case the termination of the power of revocation constituted a completed and taxable transfer, it seems to us that it does so in the other. We are accordingly of the opinion that the Court of Claims correctly construed the statute in the Means case, and properly applied the reasoning of the Supreme Court in the cases cited by it.

The gift tax act was designed primarily to prevent evasion of the estate tax act and the surtax provisions of the income tax laws. In introducing the gift-tax provisions on the floor of the House the then chairman of the Ways and Means Committee stated (Congressional Record, 68th Congress, 1st session, vol. 65, part 3, pp. 3119 and 3220): "The gift tax is a corollary to the estate tax. It is perfectly idle to attempt to raise the estate tax, as we have done today, and make no provision with reference to gifts. The estate tax at the present time is being largely evaded by the splitting up of the large estates * * *." (See also Cong. Record, vol. 65, part 4, pp. 3172, 3173; part 8, p. 8095, and dissenting opinion by Justice Brandeis in Untermeyer v. Anderson, supra.)

208 In view of the purpose for which the statute was enacted, and its language like that of the estate tax provisions in taxing the "transfer" of property, it is our opinion that it should be construed in harmony with the construction placed on the estate tax statute, and if this is done it follows inevitably that the transfer by means of trusts donative in character is not complete until the power of revocation is terminated.

The construction we place on the statute is the same as that of the respondent in Regulations 67, article 1, reading in part:

"The creation of a trust, where the grantor retains the power to revest in himself title to the corpus of the trust, does not constitute a gift subject to tax, but the annual income of the trust which is paid over to the beneficiaries shall be treated as a taxable gift for the year in which so paid. Where the power retained by the grantor to revest in himself the title to the corpus is not exercised a taxable transfer will be treated as taking place in the year in which such power is terminated."

We think it is not without a significance that while Congress amended the gift-tax sections of the 1924 act as to rates by sections 324 and 325 of the revenue act of 1926, no change was made in the imposing section which prior thereto had been construed by the respondent as above set out.

209 In conclusion, it is our opinion that the transfers of property by means of the trusts herein were transfers by gift within the meaning of the statute; that the transfers were not completed until the settlor relinquished his power of revocation in 1925; and that the Means case correctly interpreted the statute and should be followed in this proceeding.

Reviewed by the board.

Decision will be entered under Rule 50.

*Concurring opinion*

McMAHON, concurring: The correct result has been reached in this proceeding.

A gift has been defined as follows:

"The general rule deductible from the many and more or less variant statements found in the decisions is that to constitute a valid gift *inter vivos* there must be a donor competent to make it; freedom of will on his part; as intention on his part to make it, a donee capable of taking the gift; the gift must be complete and nothing left undone; the property must be delivered by the donor; and accepted by the donee; the gift must go into immediate and absolute effect; the gift must be gratuitous; *the gift must be irrevocable*, 28 C. J. 626. (Underscoring ours.)"

See Copland v. Commissioner of Internal Revenue (41 Fed. (2d) 501, 504) and Lee v. Lee (5 Fed. (2d) 768).

Applying all these tests, there was a gift of the corpus of
210 the two trusts. The real question is as to when this gift was made, whether in 1925 or previous thereto.

In the instant proceeding there were present all of the elements pointed out in these authorities essential to the making of a gift, of the corpus of the trusts, when, on July 13, 1925, the grantor relinquished his power to alter, modify or revoke the trusts. The transfer of the corpus of the trusts was then and thereby completed.

This relinquishment of this power was the final step of the grantor in the completion of the making of the gift. There was nothing further necessary, or that he could do, to complete the gift. There was nothing that he could thereafter do to defeat the gift. There was no completed gift of the corpus of the trusts previous to July 13, 1925. On that date the gift of the corpus of the trusts became effective immediately, upon the relinquishment by the grantor of his right to alter, modify or revoke the trusts.

There is no good reason why the making of a gift inter vivos can not be accomplished by a series of acts on the part of the grantor extending over a period of time; or, in other words, why all of them must occur simultaneously. (Cf. Continental Life Ins. Co. v. Sailor, 47 Fed. (2d) 911.)

In the instant proceeding we have a series of acts on the part of the grantor which commenced with the creation of the trusts on June 28, 1917, and culminated in his relinquishment of his power of alteration, modification and revocation, on July 13, 1925, resulting in the making of a gift, all in conformity with a carefully
211 formed intention on his part so to do, which intention is clearly reflected by his conduct consisting of these various acts.

Upon the foregoing authorities, construed in the light of what occurred here, the gift of the corpus of the trusts was completed on July 13, 1925.

Section 319 of the revenue act of 1924, as amended by section 324 of the revenue act of 1926, imposes a tax on a "transfer by a resident by gift * * * of any property wherever situated, whether directly or indirectly." There is no ambiguity in this phraseology as applied to the facts in the instant proceeding. Regulations 67, article 1, promulgated by the Commissioner of Internal Revenue, as applied to these facts, are in harmony with the provisions of the statute and a correct interpretation of it. The gift in issue in this proceeding is clearly taxable under the statute.

*Dissenting opinion*

MURDOCK, dissenting: The commissioner has held the petitioner liable for a gift tax on the theory that on July 13, 1925, the petitioner made a transfer by gift of the then corpus of the two trusts because on that date he relinquished his retained power of revocation. The Court of Claims sustained the commissioner in a parallel case. (Means v. United States, 39 Fed. (2) 748; certiorari denied, 282 U. S. 849.) Now the board, employing and approving the reasoning of the Court of Claims in the Means case, again sustains the commissioner. The board and the Court of Claims rely upon Saltonstall v. Saltonstall (276 U. S. 260), Chase National Bank v.
212 United States (278 U. S. 327), and Reinecke v. Northern Trust Company (278 U. S. 339), and the reasoning of the

Supreme Court in deciding those cases. In my opinion the board and the Court of Claims have not given due consideration to the fact that the solution of the only question presented in these cases depends upon a proper interpretation of the statutes to see whether or not the gift tax provisions impose a tax under the facts.

In the three Supreme Court cases relied upon, the court took occasion to point out in each that there was no question of statutory construction, and a constitutional question only was involved.

In Saltonstall v. Saltonstall, supra, the Supreme Court accepted the State court's interpretation that a tax had been clearly imposed and it considered only the right of the legislative branch of the State government to impose such a tax. It held that a reserved power of appointment left the transfer incomplete and subject to tax.

In Reinecke v. Northern Trust Company, supra, there were seven trusts involved, which the court divided into two groups; one of two trusts, and the other of five. The decision of the court in regard to the two trusts is relied upon in the prevailing opinion of the board. Section 401 of the revenue act of 1921 imposed a tax upon the transfer of the net estate. Section 402 (c) provided that there should be included in the gross estate all property "to the extent of any interest therein of which the decedent has at any time made a
213 transfer, or with respect to which he has at any time created a trust * * * intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this act)." The two trusts had been created before the passage of any statute imposing an estate tax. In these two trusts the settlor had reserved to himself the income for life and on his death the income of each was to be paid to a designated person until the termination of the trust, with remainders over. The settlor reserved to himself alone a power of revocation of the trusts. The only question which the Supreme Court considered was whether or not the taxing statute, if applied to these two trusts, was unconstitutional and void, because retroactive, within the ruling of Nichols v. Coolidge (274 U. S. 531), in which it had held that a similar section of the 1918 act was retroactive and unconstitutional as applied to transfers completed by the creation of trusts prior to the enactment of any such taxing statute. The court held:

"A transfer made subject to a power of revocation in the transferor, terminable at his death, is not complete until his death. Hence, section 402, as applied to the present transfers, is not retroactive since his death follows the passage of the statute. For that reason stated more at length in our opinion in Chase National Bank v. United States, supra, we held that the tax was rightly imposed on the transfers of the corpus of the two trusts * * *."

214 The court considered that these two trusts were intended to take effect in possession or enjoyment at or after the decedent's death and thus they were covered by a specific provision of

the statute. The only question was, could this provision be constitutionally applied to trusts of this kind.

In the Chase National Bank case the only question involved was the constitutionality of section 401 as supplemented by that part of section 402 (f) of the revenue act of 1921 which provided that the value of the gross estate should include all property "to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life." Section 401 imposed a tax upon the transfer of the net estate of every decedent. The Supreme Court said:

"The tax is plainly imposed by the explicit language of sections 401 and 402 (f) if those sections are constitutionally applied.

* * * * * * *

"The precise question presented is whether the termination at death of that power and the consequent passing to the designated beneficiaries of all rights under the policies freed of the possibility of its exercise *may be* the legitimate subject of a transfer tax * * *." (Italics supplied.)

In that case the decedent had taken out several insurance policies on his own life, aggregating $200,000. In each he named his
215 wife as beneficiary, but reserved to himself the right to change the beneficiary. He made no change up to the date of his death. The court held:

"Such an outstanding power residing exclusively in a donor *to recall a gift after it is made* is a limitation on the gift which makes it incomplete as to the donor as well as to the donee, and we think that the termination of such a power at death *may* also *be* the appropriate subject of a tax upon transfers." (Italics supplied.)

Thus it appears that in each of these cases there were specific provisions clearly imposing the tax and the only question was, were these provisions constitutional. Here the question is quite different. There is no express provision which clearly covers the present situation, and we are asked to hold that the general provision is sufficient. (Cf. Tyler v. United States, 281 U. S. 497.) If in the last two cases section 401 had stood alone without the specific provisions of 402, a question like ours could have been raised. But section 401 did not stand alone and this question was never presented to the Supreme Court. In my opinion we can not decide the question of statutory interpretation here presented on authority of these decisions of the Supreme Court on a totally different question.

But it is argued that the reasoning of the Supreme Court in these three cases is decisive of the present controversy. I do not think so. It was only necessary for the Supreme Court to hold in each
216 that the transfer was not complete until the termination of the power of revocation. The specific provisions were therefore not unconstitutional. Anything further which the court may have said was dicta which it is free to disregard if it ever has to decide the present case.

The petitioner is willing to concede that Congress had the power to impose a tax which would apply to a case such as this one. But the principal question which he raises is, has Congress done so. He claims that there is at least doubt whether the words used should be interpreted as covering the present situation.

In section 319 of the revenue act of 1924, as amended by section 324 of the revenue act of 1926, a tax was "imposed upon the transfer by a resident by gift during such calendar year of any property wherever situated, whether made directly or indirectly." The act further provided that the amount of the gift to be taxed would be the fair market value of the property at the date of the gift. That the act taxes some transfers which occur through the medium of trusts must be conceded in view of the provisions of subdivisions (a) (2) and (b) (1) of section 321. I will concede, for the sake of argument, that the logical time to tax a transfer such as was made here would be at the termination of the power. See, however, section 322. The petitioner assumes that "transfer by gift" as used in these acts, includes trusts created after the passage of the revenue act of 1924. But, he argues, it should not be applied where, as here, a trust was created prior to the passage of the revenue act of 1924 and the only thing that happened thereafter was the termination of a power
217 to alter, amend, or revoke by voluntary relinquishment. He reasons that Congress had in mind "relinquishment of powers to revoke trusts" and distinguished such relinquishment from transfers by gift by providing for both where it so intended; in the estate tax title of the revenue act of 1924, there appeared a new provision specifically including in the gross estate the value of property with respect to which the decedent had created a trust and reserved any power to himself to alter, amend, or revoke section 302 (c); no such elaboration appears in the gift tax provision; if necessary in one place, it is necessary in the other (see also sections 402 (c) of the revenue acts of 1918 and 1921 and section 302 (c) of the revenue act of 1924, in all of which transfers, on the one hand, and creations of trusts on the other, are separately provided for); when the statute is read as a whole and the language of various sections is compared, it is clear that Congress did not intend the gift tax provision to cover a case where in the year in question there was only a relinquishment of a power to alter, amend, or revoke a trust theretofore created; and, furthermore, since the relinquishment of the power to alter, amend or revoke a trust is not ordinarily regarded as a transfer of property by gift, the language of the statute must be clear if such an act is to be within the scope of the gift tax (cf. section 219 (g) of the revenue act of 1924). The commissioner has failed to reply to these arguments of the petitioner, and the board fails to dispose of them adequately. I think they have considerable persuasive force. (Cf. Reinecke v. Gardner, 277 U. S. 239.)

218 Mr. Justice Holmes, in speaking for one-half of the court in regard to the same provisions which we are here considering, said "The act should be read as referring only to transactions

taking place after it was passed * * *." (Blodgett v. Holden, 275 U. S. 142.) The creation of this trust was a transaction which took place prior to the passage of the act. The trust was valid even though the creator retained the power to alter, amend or revoke it. (Stone v. Hackett, 12 Gray 227; Farmers' Loan & Trust Co. v. Bowers, 29 Fed. (2) 14; Hibbard, Spencer, Bartlett & Co., 5 B. T. A. 464.) "The right to revoke, unexercised, is a dead thing. Its presence in a deed does not alter the character of the instrument or estate granted." (In re Dolan's Estate, 279 Pa. 582.) Power of revocation does not affect the legal title to the property. After the relinquishment of this power the trust was no more effective than formerly. (Cf. J. T. Fargason, 21 B. T. A. 1032.) Here the grantor did not retain the income to himself for life as in the Saltonstall and Reinecke cases, supra. The act taxes a "transfer" "by gift" "of any property." The relinquishment affected no physical transfer, no change in possession, and no change in the legal or equitable title to the trust res. The holder of the power was not technically the owner of the trust property at the time he relinquished the power itself "is not a property right nor an interest in property." (Farmers' Loan & Trust Co., v. Bowers, supra. Cf. Jones v. Clifton, 101 U. S. 225.) Technically the relinquishment did not transfer
219 but rather extinguished something. Cf. In re Hall's Estate, 99 N. J. L. 1; affd. (100 N. J. 405.) Thereafter, that which had vested could never be divested, the gift could no longer be recalled. Here only one thing happened after the passage of the act, the relinquishment of the power. It was at most but the final step of the grantor. Alone and separated from the steps previously taken it certainly did not transfer anything. It merely completed the shifting of the economic benefits which had been at least partially accomplished prior to 1924. If the act be held to impose a tax upon such a transaction, it must be read as referring not only to that part of the transaction which took place after it was passed (the relinquishment), but also to that part which took place before it was passed (the creation of the trust). But the act only applies to transfers made during the taxable year.

Tax provisions must be strictly construed, and if there be doubt as to a proper construction, that doubt must be resolved in favor of the taxpayer. (Gould v. Gould, 245 U. S. 151; United States v. Merriam, 263 U. S. 179; Reinecke v. Northern Trust Company, supra.) The language used must be reasonably construed but may not be extended by implication or otherwise. (Smietanka v. First Trust and Savings Bank, 257 U. S. 602.) The statute should be read as a whole. (Hellmich v. Hellman, 276 U. S. 233.) Vague or doubtful interpretations may never serve to impose a duty upon a citizen, but clear and express words are required for that purpose. (Isham v. United States, 17 Wall 496; Hartranft v. Wiegmann, 121 U. S. 609.) Not only could Congress have easily ex-
220 pressed more clearly an intention to tax upon the termination of a power to revoke, but when it has had such an intention it

has usually expressed it more clearly. Nothwithstanding the administrative construction adopted by the Treasury Department, I think that there is at least doubt as to whether the gift tax provisions, strictly construed and giving to the words used their ordinary meaning, impose a tax on the transfers here in question. (Cf. United States v. Field, 255 U. S. 257.) That doubt should be resolved in favor of the taxpayer.

MATTHEWS and GOODRICH agree with this dissent.

A true copy. Teste:

B. D. GAMBLE,
*Clerk, U. S. Board of Tax Appeals.*

221 Before United States Board of Tax Appeals

Docket No. 43698

MURRY GUGGENHEIM, PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*Decision*

Pursuant to the opinion promulgated December 18, 1931, the respondent herein on January 4, 1932, having filed a proposed redetermination of the gift tax liability of the above-named taxpayer for the calendar year 1925; and the petitioner on January 6, 1932, having filed a consent to the proposed redetermination, it is

Ordered and decided that there is a deficiency in gift tax for the year 1925 of $2,436,544.02.

(Signed) C. ROGERS ARUNDELL,
*Member.*

Enter.

Entered Jan. 6, 1932.

A true copy. Teste:

[SEAL.]

B. D. GAMBLE,
*Clerk, U. S. Board of Tax Appeals.*

222 Before United States Board of Tax Appeals

[Title omitted.]

*Petition for review*

Filed Jan. 9, 1932

Murry Guggenheim, the petitioner in this cause, by Elihu Root, jr., and George E. Cleary, his counsel, hereby files his petition for a review by the Circuit Court of Appeals for the Second Circuit of the decision by the United States Board of Tax Appeals rendered January 6, 1932 (see 24 B. T. A. —), determining a deficiency in petitioner's Federal gift tax for the calendar year 1925 in the amount of $2,436,544.02, and respectfully shows:

1. The petitioner is an individual residing at 998 Fifth Avenue, New York, New York, and was in 1925 and still is, an inhabitant of the Second Circuit.

2. NATURE OF CONTROVERSY.

The controversy involves the proper determination of the
223 petitioner's liability for Federal gift tax for the calendar year 1925 under sections 319 to 324 of the revenue act of 1924, as amended by section 324 of the revenue act of 1926. The question of law is whether these provisions should be construed as imposing a gift tax on the petitioner because of the relinquishment by him in 1925 of the power to modify, alter, or revoke two trusts established by him for the benefit of his children long prior to the enactment of such provisions.

The petitioner in 1917 established two trusts, one for the benefit of his only son, Edmond, and the other for the benefit of his only daughter, Lucile G. Gimbel. Each trust was to continue for ten years unless sooner terminated; the income during this period was to be in part distributed, and in part accumulated, and at the end of the 10-year period the principal and accumulated income of each trust were to be paid to the beneficiary free of all restrictions. Each trust provided in detail for the disposition of the property in case the beneficiary died within the 10-year period, every contingency for the ultimate disposition of the property without further act of the petitioner being provided for.

The petitioner retained the power to modify, alter, or revoke each trust, except as to income received or accrued. On July 13, 1925, he amended the trust instruments by striking therefrom the clauses under which he had reserved the power to modify, alter or revoke the trusts, thereby relinquishing these powers and making the trusts irrevocable, and the question is whether such relinquish-
ment constituted a "transfer * * * by gift * * * of
224 any property" during the year 1925, within the meaning of those words as used in the statute.

The securities constituted the trusts were delivered by the petitioner to the corporate trustee on June 28, 1917, and were in its custody at all times thereafter and all such securities were listed in its name or in the names of its nominees. The petitioner substituted some securities for others in 1918 for the last time. The petitioner was never a trustee. The trustees collected all the income and profit of the trusts and distributed a substantial part thereof to the two beneficiaries as provided by the agreements. The petitioner never received any income from the trusts nor had any of such income expended for his benefit. The securities delivered by the petitioner to the trustees were eliminated from his accounts when so delivered. He never used the trusts for personal loans or for personal credit in any way. The value of his separate property has at all times greatly exceeded the value of the trust property.

In 1921 the petitioner transferred to others the power, formerly reserved to himself, of directing and approving the management of

the trusts, and after May 5, 1921, petitioner never exercised any powers of management or control over the trust property.

The corporate trustee was a regular trust company, in which petitioner was not interested financially.

In accordance with the provisions of section 318 of the revenue act of 1926, D. H. Blair, as Commissioner of Internal Revenue,
225 determined a deficiency in the amount of $2,465,681.20 in gift tax for the calendar year 1925 against the petitioner on the basis that the relinquishment by petitioner on July 13, 1925, of the power to modify, alter, or revoke the two trusts constituted a transfer by gift during the calendar year 1925 of the property constituting the corpus of the two trusts and the income accrued thereon, taken at their value on July 13, 1925, of $13,137,818.99, and on March 8, 1929, said Blair mailed to petitioner a notice of said deficiency; thereafter, within sixty days from said date and on April 16, 1929, the petitioner filed a petition for redetermination of such deficiency by the United States Board of Tax Appeals; thereafter and on November 5, 1930, said appeal was heard by said board, the findings of fact and opinion of said board were promulgated on December 18, 1931, affirming the action of the commissioner, except as to the inclusion in the taxable gifts of $116,548.72 of accrued income, and the order of final determination by said board finding a deficiency in petitioner's gift tax for 1925 of $2,436,544.02, was entered on January 6, 1932, and said redetermination is the final decision of said board in the matter.

3. In rendering said decision and in entering said order of final redetermination, manifest errors were committed by said board to the prejudice of the petitioner herein, as will appear more in detail from the assignments of error set forth below, said board's erroneous conclusion that the relinquishment in 1925 by petitioner of his
226 power to modify, alter, or revoke the two trusts was a transfer of property by gift subject to gift tax under the statute resulting in the erroneous determination of a deficiency of $2,436,544.02 for that year instead of a determination that there was no deficiency.

4. ASSIGNMENTS OF ERROR.

The errors committed by the Board of Tax Appeals upon which the petitioner relies as the basis of this proceeding are as follows:

(1) The Board of Tax Appeals erred in determining that there was a deficiency in petitioner's gift tax for the calendar year 1925 of $2,436,544.02.

(2) The Board of Tax Appeals erred in refusing to determine that there was no deficiency in petitioner's gift tax for the calendar year 1925.

(3) The Board of Tax Appeals erred in holding that the petitioner, during the calendar year 1925, made a transfer by gift, subject to gift tax under section 319 of the revenue act of 1924, as amended, of the property constituting the corpus of two trusts created by petitioner on June 28, 1917, in favor of his son, Edmond A. Guggenheim, and his daughter, Lucile G. Gimbel, respectively.

(4) The Board of Tax Appeals erred in refusing to hold that no part of the property constituting the corpus of said two trusts
227 was transferred by gift by petitioner during the calendar year 1925.

(5) The Board of Tax Appeals erred in holding that the relinquishment by petitioner during the calendar year 1925 of his power to modify, alter, or revoke said two trusts created by him in 1917 constituted a transfer by him by gift during the calendar year 1925 of any property.

(6) The Board of Tax Appeals erred in refusing to hold that the petitioner made no transfer of any property by gift during the calendar year 1925, by relinquishing in that year the power to modify, alter, or revoke said two trusts.

(7) The Board of Tax Appeals erred in refusing to hold that the petitioner had made a transfer, prior to the calendar year 1925, of the property constituting the corpus of said two trusts.

(8) The Board of Tax Appeals erred in construing section 319 of the revenue act of 1924, as amended, as imposing a gift tax upon the petitioner by reason of the relinquishment by petitioner during the calendar year 1925 of the power to modify, alter, or revoke two trusts created by him prior to the enactment of section 319 of the revenue act of 1924 or any similar taxing statute.

(9) The Board of Tax Appeals erred in refusing to construe section 319 of the revenue act of 1924, as amended, as not impos-
228 ing a tax upon the petitioner by reason of the relinquishment by petitioner during the calendar year 1925 of the power to modify, alter, or revoke two trusts created by him prior to the enactment of section 319 of the revenue act of 1924, or any similar taxing statute.

Wherefore, your petitioner prays the United States Circuit Court of Appeals for the Second Judicial Circuit to review said proceedings and said order entered by the United States Board of Tax Appeals in this cause, and to reverse the order of said board, and direct the entry of an order by said board determining that there was no deficiency in petitioner's gift tax for the calendar year 1925, or for such other and further relief as may to said court appear proper in the premises, and that a duly authenticated transcript of the pleadings, exhibits, proof, evidence, record, and proceedings in this cause, and upon which said order was made, be sent to the United States Circuit Court of Appeals for the Second Circuit, by law provided, to the end that the errors complained of may be duly corrected and full and speedy justice done in the premises.

(Signed) MURRY GUGGENHEIM,
*Petitioner.*

(Signed) ELIHU ROOT, JR.,
(Signed) GEORGE E. CLEARY,
*Attorneys for Petitioner,*
*31 Nassau Street, New York, New York.*

229 [*Duly sworn to by Murry Guggenheim; jurat omitted in printing.*]

230 Before United States Board of Tax Appeals

[Title omitted.]

*Præcipe for transcript of record*

Filed January 11, 1932

*To the Clerk of the United States Board of Tax Appeals:*

You are hereby requested to prepare and certify and transmit to the clerk of the United States Circuit Court of Appeals for the Second Circuit, with reference to petition for review filed by the petitioner in the above cause, a transcript of the record in the above cause, prepared and transmitted as required by law and by the rules of said court, and to include in said transcript of record the following documents or certified copies thereof, to wit:

1. The docket entries of all proceedings before the Board of Tax Appeals.

2. Pleadings before the Board of Tax Appeals, as follows:

231 (a) Petition for redetermination.

(b) Answer of respondent.

3. Opinion of the Board of Tax Appeals.

4. The stipulation of facts incorporated by the board in its opinion as its findings of fact.

5. The decision of the board.

6. The petition for review, filed by the petitioner in the above cause.

7. This præcipe.

ELIHU ROOT, JR.,
GEORGE E. CLEARY,
*Attorneys for Petitioner.*

Agreed to on behalf of the Commissioner of Internal Revenue.

C. M. CHAREST,
*General Counsel for Bureau of Internal Revenue,*
*Attorney for Respondent.*

232 [Clerk's certificate to foregoing transcript omitted in printing.]

233 In United States Circuit Court of Appeals for the Second Circuit

No. 345, October term, 1931

Argued April 4, 1932. Decided May 2, 1932

MURRY GUGGENHEIM, PETITIONER,

*v.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal from the United States Board of Tax Appeals

Before MANTON, L. HAND, and CHASE, Circuit Judges

Petitioner seeks a review of a determination imposing a gift tax in the year 1925. Determination reversed.

Elihu Root, jr., and George E. Cleary, both of New York City (Elihu Root, of New York City, of counsel), for petitioner.

G. A. Youngquist, Asst. Atty. Gen., Sewall Key and Hayner N. Larson, sp. assts. to Atty. Gen. (C. M. Charest, Gen. Counsel, Bureau of Internal Revenue, of Washington, D. C., and Prew Savoy, sp. atty., Bureau of Internal Revenue, of Washington, D. C., of counsel), for respondent.

*Opinion*

MANTON, Circuit Judge:

On June 28, 1917, the petitioner established by deed two trusts, one for a son and the other for a daughter, his only children. Two trustees, one an individual and the other a corporation, were named. The trusts were created for ten years, unless sooner terminated by the petitioner. A very substantial income was paid annually to the named beneficiaries and continued to the end of the ten-year period, at which time the principal of each trust was paid to the beneficiary, free of all restrictions. Provision was made for the children of the beneficiary, and in the event of death of either named beneficiary, if either died without children surviving, the petitioner was to receive the principal and accumulations. The right to alter or revoke each trust, except as to income received or accrued, and to direct the making of all changes in the securities included in the trust property, was retained by the petitioner. The trustees were authorized to do all things in connection with the trust, but subject to the petitioner's approval. Custody and title of the trust property were given to the trustees in their names. On May 5, 1921, petitioner gave to two individuals the power reserved to himself of directing and approving the management of the trusts. On July 13, 1925, he relinquished his power to alter, modify, or revoke the trusts. The corporate trust remained the same during this time but there were changes in the individual trustees. The petitioner never became

a trustee. The income and proceeds of the trusts were paid throughout to the beneficiaries. The trust funds or the profits were never used by the petitioner in any way for his personal gain or benefit.

The revenue act of 1924 (chap. 234, § 319; 43 Stat. 253 [26 U. S. C. A., § 1131, note]) provides for the imposition, for the calendar year 1924 and each year thereafter, of "a tax * * * upon the transfer by a resident by gift during any calendar year of any property wherever situated, whether made directly or indirectly. * * *" And section 320 of the act (26 U. S. C. A., § 1132, note) provides that if a gift is made in property, the fair market value thereof at the date of the gift shall be considered the amount of the gift. The commissioner imposed a tax on the trusts in question under
234 these sections, basing it upon the determination that when, on July 13, 1925, the petitioner relinquished his power to alter, modify, or revoke the trusts, he thereby made a transfer by gift during that calendar year of the property which he gave to the trustees by the deeds of 1917.

The statute is constitutional and valid as applied to gifts made after its effective date. (Bromley v. McGaughn, 280 U. S. 124, 50 S. Ct. 46, 74 L. Ed. 226.) But it is invalid as to gifts made prior to June 2, 1924. (Untermyer v. Anderson, 276 U. S. 440, 48 S. Ct. 353, 72 L. Ed. 615.)

The question presented here is not whether Congress had the power to impose a tax which would apply to the act of relinquishment of the power of revocation in the trusts, conveying property for the benefit of named beneficiaries, but whether Congress has done so. In the phrasing of the gift tax statute, Congress had omitted any reference to powers of revocation as taxable. In the interpretation of the taxing statute, we must strictly construe the language employed and may not extend the intention by implication beyond the clear import of the terms used, nor may we enlarge the operation of the statute so as to embrace matters not specifically pointed out. And in case of doubt, that construction should be made which is in favor of the taxpayer. (Smietanka v. First Trust & Savings Bank, 257 U. S. 602, 42 S. Ct. 223, 66 L. Ed. 391; Crooks v. Harrelson, 282 U. S. 55, 51 S. Ct. 49, 75 L. Ed. 156; United States v. Merriam, 263 U. S. 179, 44 S. Ct. 69, 68 L. Ed. 240, 29 A. L. R. 1547; Gould v. Gould, 245 U. S. 151, 38 S. Ct. 53, 62 L. Ed. 211.)

The act here, by force of the provisions of subdivisions (a) (2) and (b) (1) of section 321 of the act (26 U. S. C. A., § 1133, note) taxes transfers which are made by means of the creation of trusts, but the tax must be imposed at the time of transfer. Where, as here, the trust was created prior to the passage of the revenue act of 1924, and the termination of the power to alter, amend, or revoke occurred later, in 1925, the question is presented as to when there was an effective transfer by gift. Heretofore, when Congress has spoken with reference to the relinquishment of the power to revoke trusts, and desired to impose a tax, it has made it plain that the tax is imposed when the event occurs. In the estate tax provisions of

the revenue act of 1924 there appeared a new section (section 302 (d) of the act; 26 U. S. C. A., § 1094, note), specifically including in the gross estate the value of the property with respect to which the decedent had created a trust and had reserved power in himself to alter, amend, or revoke. But in the instant taxing statute, Congress made no mention of a desire to impose the gift tax at the time of relinquishment of the power of revocation. By section 402 (c) of the revenue acts of 1918 and 1921 (40 Stat. 1097; 42 Stat. 278), and section 302 (c) of the revenue act of 1924 (26 U. S. C. A., § 1094, note), it is specifically provided that transfers by the creation of trusts are to be taxed. Comparing these sections with what Congress stated in the statute here considered, it is evident that it did not intend the gift tax provision to cover a case where, in the year in question, there was no transfer of the property but merely a relinquishment of the power to alter, amend, or revoke the trusts theretofore created. The relinquishment of the power to alter, amend, or revoke a trust is not ordinarily regarded as a transfer of property by gift. (Tyler v. United States, 281 U. S. 497, 50 S. Ct. 356, 359, 74 L. Ed. 991, 69 A. L. R. 758; United States v. Field, 255 U. S. 257, 41 S. Ct. 256, 65 L. Ed. 617, 18 A. L. R. 1461; Jones v. Clifton, 101 U. S. 225, 25 L. Ed. 908; Farmers' Loan & Trust Co. v. Bowers, 29 F. (2d) 14 (C. C. A. 2); Stone v. Hackett, 12 Gray (Mass.) 227.) The power to revoke is not a property right. (Jones v. Clifton, supra.) Congress is not restricted in levying taxes to transfers. As said in Tyler v. United States, supra: "The question here, then, is, not whether there has been, in the strict sense of that word, a 'transfer' of the property by the death of the decedent, or a receipt of it by right of succession, but whether the death has brought into being or ripened for the survivor, property rights of such character as to make appropriate the imposition of a tax upon that result (which Congress may call a transfer tax, a death duty or anything else it sees fit), to be measured, in whole or in part, by the value of such rights."

In referring to this act, the Supreme Court said in Blodgett v. Holden (275 U. S. 142, 48 S. Ct. 105, 72 L. Ed. 206) that it should be read as referring only to transactions taking place after it was passed. The right to alter or revoke a trust in no way invalidates it, nor does the power of revocation affect the legal title to the
235 property. (In re Dolan's Estate, 279 Pa. 582, 124 A. 176, 49 A. L. R. 858.) When the power of revocation was relinquished there was no transfer of the legal or beneficial title to the property involved, because that vested even though it was subject to termination at the will of the petitioner through his right to revoke. Reservation of the right to revoke, which was relinquished in 1925, was not included within the terms of the statute. Indeed, the relinquishment did not transfer but rather extinguished something. (In re Hall's Estate, 99 N. J. Law, 1, 125 A. 246, affirmed 100 N. J. Law, 405, 126 A. 924.) Thereafter that which had vested could not

be divested and the gift could no longer be recalled. Extinguishment of the power of revocation, standing alone from that which had previously passed, could not transfer anything of property to the beneficiaries. It merely completed the shifting of the economic benefits which had been in large part accomplished prior to 1924. Theretofore to impose a tax upon such relinquishment of the power would to be read into the statute something which is not there. It would make taxable an act which took place after the passage but which accomplished nothing by way of transfer as to that which had taken place prior to the passage of the act, namely, at the creation of the trust. The act clearly says that it applies only to transfers which are made during the taxable year.

The cases of Saltonstall v. Saltonstall (276 U. S. 260, 48 S. Ct. 225, 72 L. Ed. 565), Chase Nat. Bank v. United States (278 U. S. 327, 49 S. Ct. 126, 73 L. Ed. 405, 63 A. L. R. 388), and Reinecke v. Northern Trust Co. (278 U. S. 339, 49 S. Ct. 123, 73 L. Ed. 410, 66 A. L. R. 397), were cases in which the Supreme Court considered the constitutionality of taxing statutes. In the Saltonstall case the court accepted the interpretation of the state's highest court that a tax had been clearly imposed and it considered merely the right of the legislative branch of the State government to impose that tax. It was held that a reserved power of appointment left the transfer incomplete and subject to tax. The court had for consideration a trust which provided that it might be terminated in whole or in part by the donor with the concurrence of one trustee. After setting up the trusts, the Legislature of Massachusetts passed an act providing that failure to exercise a power of appointment should be taxable under the statute taxing inheritances. The words of the statute imposing this tax were clear and there arose no serious question of interpretation. The Supreme Court held that the statute was not retroactive and unconstitutional because something did occur on the extinguishment of the right of revocation which might be made the subject of a tax; that the power of appointment reserved by the donor left the transfer, as to him, incomplete and subject to a tax. The court held further that the act was not so unreasonable as to deprive the plaintiff of his property without due process of law, and that the extinguishment of the power was something on which the legislature could impose an excise tax. The statute before the court in that case (St. Mass. 1909, c. 527, § 8), read: "Whenever any person possessing such a power of apointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under the provisions of chapter five hundred sixty-three of the acts of the year one thousand nine hundred and seven and all acts in amendment thereof and in addition thereto shall be deemed to take place to the extent of such omission or failure."

The State court held that a tax having been levied, "the provisions of the trust instrument for change or termination of the trust by Peter C. Brooks with the consent of one trustee created a power of

appointment. * * *" The question there presented was quite different from that in the instant case. The statute had a specific provision imposing the tax and the only question before the Supreme Court was whether the provision was constitutional. In Chase Nat. Bank v. United States, supra, the question involved was the constitutionality of section 401 of the revenue act of 1921, as supplemented by that part of section 402 (f) (42 Stat. 277, 278) which provided that the gross estate should include all property "to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent during his own life." Section 401 imposed a tax upon the transfer of the net estate of every decedent. The court stated that the question presented was whether the termination at death of the power of decedent to dispose of the policies and their proceeds
236 and the consequent passing to the designated beneficiaries of all rights under the policies freed of the possibility of its exercise may be the legitimate subject of a transfer tax. In Reinecke v. Northern Trust Co., supra, the court considered two groups of trusts. One group containing two trusts became taxable under section 401 of the revenue act of 1921, imposing a tax upon the transfer of the net estate, and under section 402 (c), of the act (42 Stat. 278) providing for the inclusion in the gross estate of all property "to the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust * * * intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this act). * * *" The two trusts were created before the passage of the statute imposing an estate tax. The settlor had reserved to himself the income for life and on his death the income of each trust was to be paid to a designated beneficiary until the termination of the trust, with remainders over. He reserved to himself alone a power of revocation of the trusts. The Supreme Court considered only the question whether or not the taxing statute, if applied to these two trusts, was unconstitutional and void because retroactive, within the decision of Nichols v. Coolidge (274 U. S. 531, 47 S. Ct. 710, 71 L. Ed. 1184, 52 A. L. R. 1081), where it had been held that a similar section of the 1918 revenue act was retroactive and unconstitutional as applied to transfers completed by the creation of trusts prior to the enactment of any such taxing statute. The court considered that the two trusts were intended to take effect in possession or enjoyment at or after the decedent's death and were thus within the specific provision of the statute. It determined only that this provision could be constitutionally applied to trusts of this kind. In the three above cases all that was decided was that the specific provisions of the taxing statute clearly imposed the tax, and the only question was as to the constutionality of the provisions. The Supreme Court considered an income tax act in Corliss v. Bowers

(281 U. S. 376, 50 S. Ct. 336, 74 L. Ed. 916), where a husband created a trust to pay the income to his wife for life, with remainders over to his children, and reserved the power to revoke the trust. The tax was assessed on the donor under section 219 (g) of the revenue act of 1924 (26 U. S. C. A., § 960, note). The statute imposed a tax "where the grantor of a trust has * * * either alone or in conjunction with any person not a beneficiary of the trust, the power to revest in himself title to any part of the corpus of the trust, then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor." There too a question of construction and constitutionality was presented to the Supreme Court, namely, whether the revenue act could be applied constitutionally to the grantor upon the facts there presented.

We think the reference to the transfer by gift of property means a transfer of title. The power to revoke was not a property right and the owner of such power had no title; when he surrendered the power, he did not transfer title. In United States v. Field (255 U. S. 257, 41 S. Ct. 256, 258, 65 L. Ed. 617, 18 A. L. R. 1461), a tax was imposed under section 201 of the 1916 act (39 Stat. 777) upon the transfer of the net estate of a decedent. The decedent died in 1914 leaving a trust, the income of which was to be paid to his wife, and after her death to such persons as she should by will appoint. She died in 1917, leaving a will appointing the income after her death to her children. The commissioner included in the gross estate of Mrs. Field the property covered by the power of appointment. The Supreme Court dealt with the construction of the statute and held that section 202 of the act (39 Stat. 777), providing "that the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, * * * tangible or intangible, wherever situated: * * * (b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, * * *" had no provisions which applied to the exercise of a power of appointment. The court held that it was clear that section 202 (b) did not apply, and said: "It cannot, without undue laxity of construction, be made to cover a transfer resulting from a testamentary execution by decedent of a power of appointment over property not his own. It would have been
237 easy for Congress to express a purpose to tax property passing under a general power of appointment exercised by a decedent had such a purpose existed; and none was expressed in the act under consideration." The difference between the Field case and the instant case, if there be any, is a matter of the degree of economic control over the property enjoyed by a holder of a power of revocation and by a holder of a life interest plus a general power of appointment. But in both the lack of ownership by the holder of the power is apparent.

The physical possession of the trust securities and the legal title thereto were transferred to the trustees in 1917, and equitable title was transferred to the beneficiaries at the same time. There was neither possession nor legal title, nor equitable title transferred by the extinguishment of the power of revocation. Whenever Congress has seen fit to tax powers of appointment or revocation, it has indicated that intent by clear language, and we must not abandon the authorities which have been consistently insistent upon strict construction of taxing statutes. As said in the Corliss case, supra: "But taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed, the actual benefit for which the tax is paid." To impose this tax, we must say to the petitioner that the property was still his while he had to power to revoke, but when he gave up that power, he transferred the corpus by way of gift. This we can not do. Nor may we say that the income of the property was still his while he held the power to revoke and when the income went to the beneficiary it was a transfer of the income by way of gift. When he relinquished the power of revocation, he did not make the gift; that was made when he created the trust in 1917.

The order is reversed.

238 In United States Circuit Court of Appeals, Second Circuit

MURRY GUGGENHEIM, PETITIONER

*vs.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*Judgment*

Filed May 9, 1932

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be, and it hereby is, reversed.

It is further ordered that a mandate issue to the said board in accordance with this decree.

WM. PARKIN, *Clerk.*

239 [File endorsement omitted.]

240 [Clerk's certificate to foregoing transcript omitted in printing.]

241 Supreme Court of the United States

*Order allowing certiorari*

Filed October 17, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 36980. U. S. Circuit Court of Appeals, Second Circuit. Term No. 283. David Burnet, Commissioner of Internal Revenue, petitioner, vs. Murry Guggenheim. Petition for a writ of certiorari and exhibit thereto. Filed August 4, 1932. File No. 36980.

U. S. GOVERNMENT PRINTING OFFICE: 1932